TECHNICAL SUPPORT DOCUMENT -- December 21, 2000
REVISIONS TO OZONE STATE IMPLEMENTATION PLAN -- STATE OF NEW JERSEY
Open Market Emissions Trading Program

SECTION I. EXECUTIVE SUMMARY

The purpose of this technical support document (TSD) is to provide the United States Environmental Protection Agency's (EPA's) review of the State of New Jersey Department of Environmental Protection's (NJDEP's) State Implementation Plan (SIP) submittal of their Open Market Emissions Trading (OMET) Program. This TSD provides a detailed description of the various parts of NJDEP's OMET Program and its consistency with EPA's emissions trading guidance.

The primary goal of NJDEP's OMET Program is to provide a more cost-effective mechanism to meet regulatory requirements for emissions of oxides of nitrogen (NO_x) and volatile organic compounds (VOC's), in making progress toward attaining the ozone standard. NJDEP's OMET Program was submitted to the EPA on October 27, 1998, as a revision to the SIP for ozone. NJDEP supplemented the October 27, 1998 SIP revision with additional information on April 10, 2000.

EPA's review of NJDEP's OMET Program consists of determining the approvability of all aspects of NJDEP's SIP submittal in accordance with EPA's SIP and emissions trading guidance. The documentation for EPA's determination is fully discussed in this TSD.

The following Summary Table summarizes EPA's review of NJDEP's OMET Program. The Summary Table lists the EPA's emissions trading requirements, the Table number or Section number where the requirement is fully discussed within this TSD, and indicates whether or not NJDEP's OMET Program satisfies EPA's requirements. ***Section III.B.*** provides a detailed discussion of EPA's review of NJDEP's OMET Program SIP submittal.

SUMMARY TABLE of EPA's REVIEW of NJDEP's OMET PROGRAM

EPA's Emission Trading Requirement	**Table # or Section # in TSD**	**EPA's Determination of NJDEP's OMET Program**
T - NJDEP's OMET program meets EPA's requirement. **X** - NJDEP's OMET program does not meet EPA's requirement.		
Economic Incentive Program Requirements: 40 CFR 51.490 (b) Applicability	Table 1	**T**
40 CFR 51.491 Definitions	Table 2	**T**
40 CFR 51.492(d) State Program Election and Submittal 40 CFR 51.493 State Program Requirements	Table 3	**X**
40 CFR 51.493 (a) Statement of goals and rationale	Table 4	**T**
40 CFR 51.493 (a)(1)	Table 5	**T**
40 CFR 51.493 (a)(2)	Table 6	**T**
40 CFR 51.493 (b) Program Scope (1)	Table 7	**T**
40 CFR 51.493 (b) Program Scope (2)	Table 8	**T**
40 CFR 51.493 (b) Program Scope (3)	Table 9	**T**
40 CFR 51.493 (c) Program Baseline	Table 10	**T**

40 CFR 51.493 (d) Replicable Emission Quantification Methods	Table 11	**X**
40 CFR 51.493 (e) Source Requirements (1) Emission Limits	Table 12	**T**
40 CFR 51.493 (e) Source Requirements (2) Monitoring	Table 13	**T**
40 CFR 51.493 (e) Source Requirements (2) Recordkeeping	Table 14	**T**
40 CFR 51.493 (e) Source Requirements (2) Reporting	Table 15	**T**
40 CFR 51.493 (e) Source Requirements (3) any other applicable strategy-specific requirements	Table 16	**T**
40 CFR 51.493 (f) Projected Results and Audit/Reconciliation Procedures (1)	Table 17	**T**
40 CFR 51.493 (f) Projected Results and Audit/Reconciliation Procedures (2)	Table 18	**T**
40 CFR 51.493 (f) Projected Results and Audit/Reconciliation Procedures (3)	Table 19	**T**
40 CFR 51.493 (g) Implementation Schedule	Table 20	**T**
40 CFR 51.493 (h) Administrative Procedures	Table 21	**T**
40 CFR 51.493 (i) Enforcement Mechanisms	Table 22	**X**
<u>Proposed Open Market Trading Rule:</u> I. Purpose	Table 23	**T**
II. Definitions	Table 24	**T**
III. General Rules for Generation and Use (A) General Rule	Table 25	**T**
III. General Rules for Generation and Use (B) Governmental Approvals	Table 26	**T**
III. General Rules for Generation and Use (C) Market Participation	Table 27	**T**
III. General Rules for Generation and Use (D) Time of Use	Table 28	**T**

III. General Rules for Generation and Use (E) Limited Authorization to Emit	Table 29	**T**
IV. DER Generation (A) Computation of DER credits	Table 30	**T**
IV. DER Generation (B) Limitations on Generation	Table 31	**T**
IV. DER Generation (C) Notice and Certification of Generation (1) General Rule	Table 32	**T**
IV. DER Generation (C) Notice and Certification of Generation (2) Required Information	Table 33	**X**
IV. DER Generation (C) Notice and Certification of Generation (3) Certification Under Penalty of Law	Table 34	**T**
V. DER Use (A) Time of Acquisition and (B) Sufficiency	Table 35	**T**
V. DER Use (C) Operating Permits	Table 36	**T**
V. DER Use (D) Environmental Contribution	Table 37	**T**
V. DER Use (E) Compliance Calculation	Table 38	**T**
V. DER Use (F) Notice of Intent to Use DER's (1) General Rule	Table 39	**T**
V. DER Use (F) Notice of Intent to Use DER's (2) Required Information	Table 40	**X**
V. DER Use (G) Notice and Certification of Use (1) General Rule	Table 41	**T**
V. DER Use (G) Notice and Certification of Use (2) Required Information	Table 42	**X**
V. DER Use (G) Notice and Certification of Use (3) Certification Under Penalty of Law	Table 43	**T**
V. DER Use (H) Use Limitations	Table 44	**T**
VI. Geographic Scope of Trading (A) General Rule	Table 45	**T**
VI. Geographic Scope of Trading (B) Geographic Scope	Table 46	**T**
VI. Geographic Scope of Trading (C) Interstate Trading (MOU between CT and NJ)	Table 47	**T**
VII. Recordkeeping and Public Availability (A) Recordkeeping	Table 48	**T**

VII. Recordkeeping and Public Availability (B) Public Availability	Table 49	**T**
VIII. Protocol Development and Approval (A) General Rule	Table 50	**T**
VIII. Protocol Development and Approval (B) USEPA Approved Protocols	Table 51	**X**
VIII. Protocol Development and Approval (C) Protocol Elements	Table 52	**T**
VIII. Protocol Development and Approval (D) Emission Quantification Methods	Table 53	**T**
IX. DER Use for NSR and Conformity Purposes (A) General Rule	Table 54	**T**
IX. DER Use for NSR and Conformity Purposes (B) Specific Requirements for NSR	Table 55	**T**
X. Program Audits	Table 56	**T**
XI. Enforcement (A) Compliance Burden	Table 57	**T**
XI. Enforcement (B) Violation Day Definition	Table 58	**X**
Other Approval Topics:		
Adverse Local Impact of HAP Emissions	Section III.B.3.a.	**T**
Claiming Ownership of DER Credits	Section III.B.3.b.	**X**
Notification of Metropolitan Planning Organizations	Section III.B.3.c.	**X**
Notification of Federal Land Managers	Section III.B.3.d.	**X**
EPA's Comments Prior to SIP Revision Submittal	Section III.B.3.e.	**X**

SECTION II. THE OPEN MARKET SYSTEM AND EPA's BASIS FOR EVALUATION

Section II.A. Open Market Emissions Trading System

Emissions trading is an innovative approach to air pollution control that can bring faster, less expensive progress toward achieving air quality goals. Emissions trading is a market-based approach to air quality regulation, rather than a traditional command-and-control approach. Traditional command-and-control regulation sets a uniform standard for a category of sources, and generally treats all sources within a category subject to the standard in the same way. Sources with high compliance costs generally must achieve the same level of reductions as sources with low compliance costs, unless regulatory flexibility (such as case-by-case

modifications, variances or exemptions from emission standards for sources with high compliance costs) is employed to create different standards. If the standards are the same for sources with high and low compliance costs, the result is inefficient because it provides no incentive for sources with low compliance costs to produce additional reductions. If less stringent standards are applied to the sources with high compliance costs, some environmental benefits are foregone.

In contrast, market-based regulation capitalizes on this compliance cost differential by allowing sources with higher compliance costs to purchase reductions from the sources with lower compliance costs. The net effect is the same level of overall air quality benefit but for a smaller total cost, or an even greater air quality benefit for the same cost. As a result, the regulatory structure is more cost-effective and flexible without harm to the environment. These benefits become increasingly desirable as standards become tighter and compliance becomes more difficult.

The SIP revisions discussed in this TSD establish an open market trading system, rather than trading under a "cap and trade" or "closed market" system. A "cap and trade" system establishes a cap on total emissions from a specified group of sources and allocates a portion of the total cap to each of the sources in the group. A source which does not use all of its allowances may trade some or all of the unused allowances; if a source's emissions will exceed its allowances, it must purchase additional allowances from other sources in the group. Examples of cap and trade systems include the Federal Acid Rain Trading Program for sulfur dioxide emissions and the Ozone Transport Commission's NO_x Budget Program.

Under an open market system, a source (rather than just the specified group of sources under the cap and trade system) can generate discrete emission reduction (DER) credits by taking actions to reduce their emissions below required levels. Similarly, a source can then comply with an emissions limitation by purchasing and using the appropriate quantity of DER credits, instead of complying by installing control apparatus or making process changes. In traditional trading programs, such as the emission offset program under New Source Review, a source must accept a permanent tightening of applicable emissions reduction requirements in order to generate a continuing stream of credits. However, this differs in an open market trading program where a generating source would not be subject to such a permanent tightening.

Though cap and trade systems have produced substantial benefits, it is only one type of trading system. An open market system can potentially include a more diverse range of sources than has been covered by cap and trade systems. As a result, it can encourage smaller stationary sources and mobile sources to participate in the trading market and develop innovative approaches to reducing emissions.

In an open market system, the generation of DER credits must be based only upon emission reductions that are real, surplus and properly quantified:

- Real reductions are actual, genuine and authentic;
- To be considered surplus, reductions must not be otherwise required by existing regulatory requirements or relied on in attainment or maintenance plans;
- The reductions must be quantified in accordance with a valid protocol.

From 1992 through 1996, the Northeast States for Coordinated Air Use Management (NESCAUM) and the Mid-Atlantic Regional Air Management Association (MARAMA), with funding from EPA, sponsored a

collaborative emissions trading demonstration project. Participants included representatives of the northeast and mid-atlantic states, including New Jersey, industry, EPA, and other environmental organizations. The purpose of this collaborative effort was to explore opportunities to obtain faster air quality improvement at less cost than achievable through traditional regulatory means.

The NESCAUM/MARAMA project focused on the following two phases:

- The first phase was the identification of emission reduction strategies and the development of protocols for quantification of the emission reductions achieved;
- The second phase was the development and improvement of actual model trades, where emission reductions generated by one person would be sold and used by another person for compliance. The purpose of the model trades was to demonstrate viability, illustrate the potential benefits and to bring out the issues entailed in emissions trading.

Independent of this TSD, EPA will propose a rulemaking on six model trades in New Jersey as source-specific SIP revisions, in the near future.

Historically, trading emission reductions requires case-by-case revisions to the SIP, which must be submitted to the EPA for approval. However, case-by-case SIP revisions are time-consuming and can involve substantial transaction costs for the private sector and the regulatory agencies. These transaction costs have discouraged emissions trading. State adoption of a generic state-wide trading rule, such as an open market trading rule, will eliminate the need for case-by-case SIP revisions and make trading less cumbersome. After State-adoption, the rule would be submitted to the EPA as a SIP revision. If the EPA approves the SIP revision, then emission reductions could be used in accordance with the rules without the need for case-by-case SIP revisions.

Section II.B. EPA's Basis for Evaluating Open Market Trading Programs

Since the 1970's, EPA has issued several guidance documents for trading emission reductions. The first major piece of guidance was the final Emission Trading Policy Statement {51 Federal Register (FR) 43814, December 4, 1986}, which provides a framework for EPA-approvable emission trading. This policy requires that all reductions used in trades be enforceable, permanent, surplus and quantifiable. This policy provides guidance for States to develop generic trading rules that would allow specific two-source trades without source-specific SIP revisions, as well as approval criteria for trades submitted as source-specific SIP revisions. Open Market trading does not change the requirements of the Emission Trading Policy Statement or the types of emissions trading that can occur under the Policy. Therefore, EPA believes the Emission Trading Policy Statement is still relevant guidance as approval criteria for trades submitted as source-specific SIP revisions.

On April 7, 1994, EPA issued Economic Incentive Program (EIP) rules and guidance {40 Code of Federal Regulations (CFR) Part 51 Subpart U}, which outlined requirements for establishing EIPs that States are required to adopt, in some cases, to meet the ozone and carbon monoxide standards in designated nonattainment areas. New Jersey is not required to submit an EIP, however Subpart U is considered guidance for the development of voluntary EIPs. The types of trading envisioned in the EIP are emissions limiting strategies (such as cap and trade programs), market-response strategies (open market trading programs), and directionally-sound strategies.

On March 16, 1995, President Clinton announced 25 major initiatives for reinventing federal environmental regulations. Among these 25 initiatives, the President's first priority was for the EPA to develop an open market air emissions trading rule. EPA published a proposed policy on open market trading programs (60 FR 39668, August 3, 1995) and a proposed model open market trading rule (60 FR 44290, August 25, 1995). The intent of the proposed model rule was any state which adopts the final version of the proposed model rule as its own open market trading rule can expect that the EPA would 'automatically' approve the state rule. However, states may adopt rules that vary from the proposed model rule. EPA will evaluate such variations on a case-by-case basis during the SIP revision review, but approval may take longer (as in the case of NJDEP's OMET Program).

EPA cited the following principles that guided its development of the proposed model rule:

- Do not interfere with ongoing state market-based programs;
  "....The proposed model rule is neither mandatory nor prescriptive. States should be free to tailor their own programs, which may or may not include an open market trading component...." and "....The EPA would evaluate SIP revisions containing variations of this model rule on a case-specific basis...." (60 FR 39672).
- Reduce compliance costs without compromising environmental integrity;
- Provide for a long-term benefit to the environment;
- Maximize flexibility and minimize transaction and regulatory costs; and
- Actively involve the public, industry and states in the process.

EPA's proposed policy on open market trading indicates that state open market trading rules would establish the ground rules for one type of market-response strategy as defined by the EIP (60 FR 39692).

EPA, in consultation with States and other stakeholders, decided not to release a final model rule, but to use the proposed open market policy and model rule as a guidance document. In a March 10, 1998 letter from Richard D. Wilson, Acting Assistant Administrator for Air and Radiation to Congressman Thomas J. Bliley, Chairman of the Committee on Commerce, EPA clarified it's current policy on open market trading. The letter acknowledged the Agency's shift from issuing a final model rule since it became clear that few, if any, States would use a final model rule. This letter states "*....The approach that EPA and the States have since followed, and that we continue to believe is most effective and helpful, is for EPA to work with the States to develop open market programs tailored to their individual circumstances. In this process EPA and the States are using the August 1995 proposal as guidance and taking into account both State circumstances and the many useful comments we received in response to the proposal.*"

Also available for reference is a Notice of Proposed Rulemaking published by EPA Region 5 proposing approval of the State of Michigan's Emissions Averaging and Emission Reduction Credit Trading Rules (62 FR 48972, September 18, 1997). This Notice includes additional Agency guidance on several open market trading provisions.

New Jersey adopted its SIP on July 1, 1996 and submitted it to EPA on October 27, 1998. In response to requests by EPA, New Jersey supplemented the submittal with minor revisions on April 27, 2000.

By notice dated September 15, 1999, EPA proposed revised guidance for economic incentive

programs. 62 FR 50086. This proposal would revise in certain respects the Agency guidance provided in the 1994 EIP, the 1995 open market trading program proposals and the guidance provided in the 1997 EPA proposal to approve the Michigan program. Also notable is the inclusion in the proposed EIP revisions of new guidance on avoiding adverse local impacts of hazardous air pollutant emissions with VOC trading programs, referred to as the "HAP framework." The public comment period on the September 15, 1999 proposal ended December 10, 1999. EPA is currently considering the public's comments in developing a final revision to the EIP guidance.

In developing its OMET SIP revision, New Jersey relied on EPA's statements that New Jersey could base its SIP revision on the 1995 open market trading proposal. On several occasions during the adoption process, EPA and State officials confirmed EPA's support for New Jersey's reliance on the 1995 proposal (September 21, 1995 note to the file regarding a public workshop in Trenton, New Jersey; and, March 15, 1996, March 21, 1996, April 30, 1996, and May 22, 1996 letters from EPA to New Jersey.) By the same token, New Jersey's submittal of the SIP revision accorded with EPA's representations to Congressman Bliley that States could use the 1995 guidance to assist them in developing their open market trading programs. EPA evaluated the SIP revision against the guidance available at the time of the program's development and submittal. This guidance included both EPA's 1995 open market trading proposal, and the guidance provided in the Federal Register notice accompanying the 1997 EPA proposal to approve Michigan's trading program. In light of this reliance, EPA is proposing to approve the New Jersey SIP revision, except for the deficiencies discussed in Section III.B. In doing so, EPA is proposing to apply, on an interim basis, both the 1995 open market trading program proposals and the guidance contained in the 1997 EPA proposal to approve the Michigan program, in light of New Jersey's reliance on those two proposals, recognizing that some aspects of these proposals may be further revised by the policies of the 1999 EIP proposal, if and when it is finalized.

EPA believes the basis for this proposed action is a reasonable approach in the interest of supporting trading programs. However, due to EPA's lack of experience with open market trading programs and the many issues that such programs raise, EPA will use any future final revised EIP guidance as a basis for re-evaluating New Jersey's OMET Program, in coordination with the State, to ensure that its operation is consistent with the Clean Air Act and federal regulation. EPA will notify the State of any deficiencies in the OMET Program, within 18 months after EPA issues a final revised EIP guidance. As with any SIP, EPA may require New Jersey to revise the OMET Program where necessary and re-submit the OMET Program according to the requirements and deadlines under section 110(k)(5) of the Act. According to section 110(k)(5), New Jersey may have up to 18 months to revise and re-submit the OMET Program after EPA notifies the State of any deficiencies.

The 1994 EIP established, through notice-and-comment action, rules for mandatory EIPs and guidance for voluntary EIPs. Any final action that EPA may take to approve the New Jersey OMET Program, to the extent that action differs from the guidance portion of the 1994 EIP, would revise that portion of the 1994 EIP action only for purposes of this action on the New Jersey SIP submittal. EPA's proposed 1999 EIP guidance, once completed through notice-and-comment action, may further revise the guidance portion of the 1994 EIP action.

Finally, the NJDEP's OMET Program provides a compliance option for sources to choose cost-effective control strategies in order to comply with the regulatory requirements for attaining the ozone standard. SIP measures must be converted into legally-enforceable vehicles such as a regulation or a permit. These vehicles

must meet EPA's criteria regarding the enforceability of SIP's and SIP revisions. Guidance on enforceability requirements have been provided to Regional Offices and States in a Potter/Adams/Blake memoranda dated September 23, 1987.

EPA's basis for evaluating the NJDEP's OMET Program, is whether it meets the requirements of SIPs as described in section 110 of the Clean Air Act (Act). More specifically, EPA will use the EIP of 1994 as guidance for voluntary EIPs. In those areas where the EIP does not address certain provisions in an open market system, EPA will continue to use the 1995 proposed policy on open market trading and the 1997 proposed notice on Michigan's Program and the "HAP framework" as relevant guidance, in coordination with other guidance documents, to determine the approvability of emission trades and emission trading programs like NJDEP's OMET Program.

SECTION III. ANALYSIS OF NJDEP's OPEN MARKET TRADING SIP REVISION

Section III.A. Description of the Submittal

NJDEP's OMET Program was effective on August 2, 1996. On October 27, 1998, NJDEP submitted a revision to the ozone SIP for the OMET Program. NJDEP's OMET Program SIP revision submittal consists of: (1) a new rule Subchapter 30 entitled Open Market Emissions Trading and related correction notices; (2) amendments to existing rules for emission offsets, VOC and NO_x RACT, operating permits, and civil administrative penalties; (3) a Memorandum of Understanding between New Jersey and the State of Connecticut; and (4) ten applications for DER credit generation strategies from May 1, 1992 through August 2, 1996. The following sections describe each of the 4 parts of the NJDEP's OMET Program SIP submittal. The reader should refer to the regulations and documents for a full description of the OMET Program requirements.

Section III.A.1. New Rules -- Subchapter 30 -- Open Market Emissions Trading

[New Jersey Administrative Code, Title 7, Chapter 27, Subchapter 30 (N.J.A.C. 7:27-30)]

N.J.A.C. 7:27-30.1 Purpose and scope

This section states the purpose of the new rules is to establish procedures for the generation and use of DER credits. This section also states that nothing in the subchapter affects the applicability of the requirements of any law, regulation, order or permit. For example, if an emission increase of a pollutant triggers a permit modification under other regulations, that requirement would still be triggered even if the emissions increase arose when DER credits were being generated.

N.J.A.C. 7:27-30.2 Definitions

This section defines terms used in Subchapter 30. Those definitions deserving additional explanation are discussed below in the summaries of each provision of Subchapter 30.

N.J.A.C. 7:27-30.3 General provisions

This section sets forth general provisions that apply to this subchapter. It specifies that a DER credit is a limited authorization to emit and not a property right. Also, no prior governmental approval is required to generate, transfer or use DER credits. The one exception is when DER credits are used to comply with the emission offset requirements under Subchapter 18, discussed in more detail in section 30.13.

This section specifies the addresses for submittals to the NJDEP and for submittals to the operator of NJDEP's Registry, Mosakin Corporation of Somerset, NJ. Also, a DER credit represents one twentieth of a ton of emission reductions (1 ton of emission reductions = 20 DER credits). The increment is small enough to enable smaller sources to generate DER credits and participate in the open market system. DER credits must be generated, transferred and used in whole DER credits. To ensure that rounding a quantity of emission reductions does not adversely affect air quality, any quantity of DER credits generated is rounded down to the nearest twentieth of a ton, and any quantity of DER credits needed for compliance is rounded up to the nearest twentieth of a ton.

N.J.A.C. 7:27-30.4 DER credit generation: general requirements

This section establishes who may generate DER credits:

(1) The owner or operator of an emissions source who takes an action to reduce the source's actual emission rate below its baseline emission rate normalized for economic output;
(2) The owner or operator of a facility subject to a facility-wide permit at which pollution prevention measures are taken that reduce the facility's fugitive emissions;
(3) The owner or operator of a refinery at which motor vehicle fuel, sold in New Jersey, is reformulated;
(4) A person who implements a mobile source activity reduction plan approved by the EPA or a State Agency (such as an employee commute option plan approved by the State Department of Transportation); or
(5) A person who implements electrical energy efficiency measures.

Other general requirements to credit generation are: (1) a DER credit must be based on emission reductions that are real, surplus and properly quantified; (2) a DER credit shall not be based on an emission reduction which has previously been the basis for generating a DER credit (no "double-counting"); (3) the generation period for any batch of DER credits shall not exceed one year, but additional batches of credits may be generated over consecutive generation periods.

N.J.A.C. 7:27-30.5 DER credit generation: computation of DER credits

This section requires the quantity of DER credits to be determined in accordance with a quantification protocol meeting the requirements of section 30.20. The quantity of DER credits generated is the difference between baseline emissions and actual emissions according to the formula:

DER credits = (Baseline Emission Rate - Actual Emission Rate) x Economic Output

The generator source's **baseline emission rate** is the rate at which it would have emitted VOC or NO_x

during the generation period, if the generator had not taken measures to generate DER credits. Generally, the generator source's baseline emission rate is based on its allowable emission rate. This rate is the lowest emission limit under any laws, rules or orders that apply to the source during the generation period. If the NJDEP has approved an alternative emission rate for the source, which is less stringent than the rate which would normally apply under a rule or law, the rate which would normally apply under the rule or the law is used to determine the source's baseline emissions. To determine a generator source's baseline emission rate, a "design margin" must be subtracted from the source's allowable emission rate.

However, the generator source's baseline emission rate would not be based on its allowable emission rate if, over a "baseline period" which is representative of the generator source's normal operations, the source's actual emission rate were lower than its allowable emission rate. This lower rate would be the basis for determining a source's baseline emissions. The baseline period must contain dates which correspond to the dates in the generation period; if the generation period is May through September of a given year, the baseline period must be May through September in prior years. The baseline period is normally the two most representative corresponding periods in the five years before the generation period begins. If DER credits have been generated over several consecutive years, the baseline period would be the two most representative corresponding periods in the five-year period before the first of the generation years.

It is sometimes possible to measure the generator source's actual emission rate upstream of the point where the generation strategy is applied. If this actual emission rate is lower than the allowable rate and the actual rate during the baseline period discussed above, it would be the basis for determining the source's baseline emission rate.

Each of these rates serves an important function, since DER credits can be based only on emission reductions that are real and surplus. If a generator source reduces its emissions, but not below its allowable emissions, the source would be in violation of its emission limit and the reduction would not be "surplus." If the source reduces its emissions, but not below its actual emissions during a baseline period and not below the level measured upstream of the generation strategy, the reductions are not attributable to the generation strategy and are therefore not "real."

Each of these rates must be expressed in terms of emissions per unit of economic output (such as pounds per megawatt of electricity generated, or pounds per widget produced). The lowest of these rates is used to determine the generator source's total emissions; those total emissions are then divided by the number of units of economic output produced in the baseline period (if the lowest of the three rates is the actual emission rate during the baseline period), or the number of units of economic output produced in the generation period (if one of the other two rates is the lowest).

The generator source's **actual emission rate** is based on emissions actually measured during the generation period, and the source's economic output during the generation period. Finally, the generator source has generated DER credits equal to the difference between its baseline emission rate and its actual emission rate, multiplied by the economic output during the generation period.

When a generator source generates DER credits, the amount of any emission increase from another source as a result of generating DER credits, would be deducted from the quantity of DER credits generated. If

the total emissions over any part of the generation period exceed the maximum quantity authorized under the generator source's permit, the generator source would be in violation of its permit and no DER credits would be generated by the source during the period in which the violation was occurring.

N.J.A.C. 7:27-30.6 DER credit generation: limitations on generation

The following emission reductions are not a basis for generating a DER credit:

(1) Shutdowns and curtailments. Certain cessations and reductions involving motor vehicles and other mobile sources are not considered shutdowns or curtailments. For example, reducing vehicle miles traveled pursuant to an employer trip reduction plan or other similar measure approved by the EPA or by a State agency is not considered a curtailment. In addition, when a "demand-side management" measure uses electrical energy efficiency measures to reduce demand for electricity and thereby reduce emissions, the measure is not considered a curtailment.

(2) Modifying or discontinuing an activity that violates any Federal, State or local law, regulation, permit, or order. Similarly, an emission reduction cannot be the basis for generating a DER credit if the Act or New Jersey Air Pollution Control Act required that the reduction be made. If the generator source reduces emissions by more than the amount necessary to comply with these requirements, the additional amount would be "surplus" and could be a basis for DER credits.

(3) Reductions already credited or used for another trading program.

(4) If a source is subject to an alternative RACT standard, the source cannot generate DER credits by reducing emissions to a level that is below the alternative emission limit but still above the RACT standard. But if the source reduces its emissions below the RACT standard, it can generate DER credits based on the difference between the source's actual emission rate and the RACT standard.

(5) A source cannot generate DER credits when its facility-specific emission limit is not yet established. Until the limit is established, the source's baseline emissions cannot be determined.

(6) Reductions accompanied by an increase in any hazardous air pollutant (HAP) emissions which exceed the de minimis levels designated by EPA in proposed rules at 59 FR 15504, April 1, 1994.

(7) Reductions accompanied by a violation of any Federal, State law, regulation, permit, or order.

(8) Emission sources not included in the State's emission inventory as of August 2, 1996, as listed in Appendix A attached to Subchapter 30.

(9) Reductions generated before May 1, 1992.

This section also contains criteria for emission reductions generated any time between May 1, 1992 and August 2, 1996. In order for emission reductions during this time period to be a basis for generating DER credits, one of the following must have occurred by October 31, 1996:

(a) NJDEP informed the generator in writing that the emission reduction is real, surplus and properly

quantified [Subchapter 30.6(b)(1)]; or

(b) The generator submitted a Notice and Certification of DER Credit Generation [Subchapter 30.6(b)(2)].

The only generation strategies which meet the criteria of Subchapter 30.6(b)(1) are the 7,139 tons of NO_x emission reductions generated by Public Service Electric and Gas in 1992 and 1993. These emission reductions are the subject of a source-specific New Jersey SIP revision for which EPA will propose a rulemaking in the near future, independent of this TSD. ***Section III.A.4.*** of this document discusses all of the DER credit generation strategies submitted pursuant to Subchapter 30.6(b)(2).

N.J.A.C. 7:27-30.7 DER credit generation: Notice and Certification of DER Credit Generation

This section requires the generator to submit a Notice and Certification of DER Credit Generation to the Registry for each set of DER credits generated. Subchapter 30.16 lists the information, statements and certifications which must be included in the notice. In addition, the Notice must contain: (1) the amount of any increases in HAP emissions as a result of the DER credit generation; (2) a statement that the emission reductions on which the DER credits are based are real and surplus; and (3) a statement that the DER credits were not generated from a prohibited activity in Subchapter 30.6.

The generator must submit the notice to the Registry within 90 days after the generation period ends. If the generator submits the notice late, the quantity of DER credits covered by the notice would be reduced by ten percent immediately, and by an additional ten percent for each additional 30 days that the notice is late. For example, if the generator generated 100 tons of DER credits and submitted the notice 40 days late, the quantity of DER credits generated would be 80 tons. The generator would be responsible for including this adjusted amount in the notice.

N.J.A.C. 7:27-30.8 DER credit Registry

This section requires the Registry to show that a user holds the DER credit, that the DER credits were verified, that the DER credit has not been used previously or retired, and that the NJDEP nor the EPA has found the DER credit to be invalid, before a user source in New Jersey can use a DER credit for compliance. The Registry will include information on all Notices of DER credit generation, transfer, verification, intent to use, use, retirement and DER credits that are invalid.

Within one business day after receiving any Notice, the Registry is required to determine whether the Notice contains all of the required information. If the Notice is complete, the Registry operator must update the Registry within another business day and assign a unique serial number for each DER credit. The Registry will reject any incomplete Notice and return it to the person who filed it. Until that person has filed a complete Notice with the Registry, the requirement to file the Notice with the Registry will not have been satisfied.

N.J.A.C. 7:27-30.9 DER credit transfer

This section requires the transferor to provide the transferee with copies of the relevant Notice and Certification of DER Credit Generation and all supporting documentation when transferring DER credits. The transferee is similarly responsible for obtaining this documentation from the transferor; as a result, the failure of the

transferor to provide the documentation will not be a defense for a user who lacks sufficient documentation to support its DER credits.

The transferor and the transferee must also jointly notify the Registry that the DER credits have been transferred. The Registry is then updated to reflect the transfer, thus minimizing the possibility that a generator could fraudulently attempt to transfer the same DER twice.

N.J.A.C. 7:27-30.10 DER credit verification

This section requires users to have DER credits verified by a New Jersey-licensed professional engineer or certified public accountant, before they are used. The verifier must be independent of the generator, because the generator's interest in having DER credits verified to increase their market value could conflict with the verifier's interest in verifying only valid DER credits. The verifier need not be independent of the user, because this conflict of interest would not arise between the verifier and the user.

In verifying a batch of DER credits, the verifier must make a diligent inquiry that goes beyond simply relying on the generator's representations. For example, if documentation supplied by the generator appears to be incomplete or self-contradictory, the verifier would need to investigate further even though the generator would have certified that the documentation was true, accurate and complete. After verifying a batch of DER credits, the verifier notifies the holder of the DER credits and the Registry.

N.J.A.C. 7:27-30.11 DER credit use: general requirements

This section contains the general requirements for the use of DER credits:

(1) Only DER credits which satisfy the Registry requirements may be used;
(2) DER credits based on a NO_x emission reduction may not be used to comply with a VOC requirement;
(3) DER credits based on a VOC emission reduction may not be used to comply with a NO_x requirement;
(4) DER credits generated outside of the ozone season cannot be used in an ozone season;
(5) A use period cannot exceed one year, however, DER credits may be used over consecutive use periods;
(6) A Notice of Intent to Use must be submitted to the Registry at least 30 days before the use of DER credits. If the Notice is late, a user may begin the use period on the intended date, however between that intended date and the date which is 30 days after filing of the Notice of Intent, the number of DER credits required for compliance would be multiplied by 1.5;
(7) A user cannot begin using DER credits before filing the Notice of Intent to Use;
(8) If a user has not acquired ownership of all DER credits needed for compliance before beginning to use those DER credits, the shortfall is multiplied by three to determine the number of DER credits needed for compliance;
(9) For each day in which both of the above multipliers apply, the number of DER credits needed for compliance shall be multiplied by 4.5;
(10) If it is determined that a user has used invalid DER credits, the user must acquire the replacement DER credits within 60 days and file amended Notices with the Registry;
(11) NJDEP may request an interim calculation of DER credits needed for compliance at any time during the use period. The user must submit this interim calculation within 15 days;
(12) A person may voluntarily retire DER credits by submitting a Notice of Retirement to the Registry;
(13) A user may be subject to penalties for violation if the user: (1) uses DER credits that do not satisfy the

Registry requirements or the general use requirements; (2) fails to submit a Notice of Intent to Use before the use period begins; (3) fails to hold the full quantity of DER credits needed for compliance by the date the Notice and Certification of Use is due; (3) fails to replace invalid DER credits.

N.J.A.C. 7:27-30.12 DER credit use: computation of DER credits

This section requires a user to calculate the quantity of DER credits needed for compliance with a quantification protocol and according to the provisions in this section. The quantity of DER credits that a source needs for compliance is the difference between the source's actual emissions and its baseline emissions, multiplied by a factor of ten percent to retire additional DER credits as a benefit for the environment, according to the formula:

$$\text{DER credits} = \frac{\text{(Actual Emissions - Baseline Emissions)}}{0.9}$$

The formula is defined as follows:
DER credits are the quantity of discrete emission reductions needed for compliance.
Actual emissions are the total mass emissions the user source actually emitted during the use period. Actual emissions are expressed as units of mass (pounds or tons).
Baseline emissions are the total mass emissions the user source would have emitted during the use period, if the user source's emission rate had been at the lowest allowable emission rate applicable during the use period, minus a design margin. Baseline emissions are also expressed as units of mass.
Division by 0.9 ensures that ten percent of the DER credits needed for compliance are retired at the time of use.

N.J.A.C. 7:27-30.13 DER credit use: required, authorized and prohibited uses

This section identifies the uses of DER credits that are required and/or allowed under other Subchapters, and those uses that are prohibited.

Required uses: DER credits must be used to compensate for excess emissions authorized under the following exemptions and waivers:
(1) An alternative VOC control plan approved under Subchapter 16 after August 2, 1996;
(2) An alternative maximum allowable NO_x emission rate approved under Subchapter 19 after August 2, 1996;
(3) An innovative NO_x control technology plan approved under Subchapter 19, if implementing the innovative control technology produces a smaller emission reduction than the owner or operator had stated that it would achieve; and
(4) Provisions for a maximum emergency generation (MEG) alert under Subchapter 19.

Authorized uses: DER credits may be used to comply with any emission limit unless such use is prohibited. Examples of authorized uses include compliance with:
(1) VOC RACT requirements under Subchapter 16;
(2) NO_x RACT requirements under Subchapter 19;
(3) any future VOC or NO_x emission limit, unless expressly prohibited;

(4) any requirements of an employer trip reduction program, but not to satisfy the compliance plan submittal requirement.

DER credits may be used to comply with emission offset requirements under Subchapter 18 according to the following requirements:

(1) DER credits to be used for offsets must be generated at the same time they are used;
(2) the generator enters into a binding agreement to generate the DER credits;
(3) the user enters into an enforceable commitment to continue to obtain DER credits for the life of the equipment or until emission offsets are secured under Subchapter 18;
(4) DER credits are verified each year before April 30 of the following year;
(5) the permit issued under Subchapter 22 and 18 allows for the use of DER credits;
(6) other requirements of Subchapter 18 and 30.

Prohibited uses: DER credits are prohibited for use for the following purposes:

(1) to avoid New Source Review under Subchapter 18;
(2) to meet new source performance standards (NSPS), best available control technology (BACT) standards, or lowest achievable emissions reduction (LAER) standards;
(3) to comply with maximum available control technology (MACT) standards for air toxics;
(4) to comply with solid waste combustion requirements;
(5) to comply with the acid rain control provisions of Title IV of the Act;
(6) to comply with the NJDEP's requirement that new or altered equipment incorporates "advances in the art of air pollution control";
(7) to meet requirements for a vehicle inspection and maintenance program; clean fueled fleet requirements; motor vehicle emissions standards; standards for nonroad vehicles; requirements for reformulated gasoline; requirements for Reid vapor pressure standards; and State motor vehicle emission standards;
(8) to comply with ozone control standards set under section 183 of the Act, except VOC and NO_x RACT;
(9) to exceed the allowable emission rate established in a preconstruction permit and certificate issued under Subchapter 8;
(10) to comply with the State prohibition of air pollution at Subchapters 5, 8 and 22;
(11) in the instance where HAP emissions increase above the applicable EPA de minimis level.

N.J.A.C. 7:27-30.14 DER credit use: Notice of Intent to Use DER Credits

This section requires the user to submit a Notice of Intent to Use DER Credits to the Registry at least 30 days before the use period begins. The Notice must contain the following information: the requirements the user is complying with; where the DER credits were generated; the date the DER credits were acquired; the quantity of DER credits to be used during the ozone season and outside the ozone season; and an estimate of the quantity of increases in HAP emissions that will result from the use of DER credits. The section also provides for amendments to the Notice.

N.J.A.C. 7:27-30.15 DER credit use: Notice and Certification of DER Credit Use

This section requires the user to submit a Notice and Certification of DER Credit Use to the Registry within 30 days after the end of each use period. In the Notice of Intent to Use DER Credits, the user provides

information about the "expected use". In the Notice and Certification of DER Credit Use, the user provides the corresponding information about the actual use.

N.J.A.C. 7:27-30.16 General notice requirements

This section establishes the general requirements for a Notice and Certification of DER Credit Generation, a Notice of Intent to Use DER Credits, and a Notice and Certification of DER Credit Use. The reader is referred to Subchapter 30.16 for the list of information which needs to be in each Notice. This section also requires the generator and the user certify that the information in the Notices, and the documentation attached to it, are true, accurate and complete.

N.J.A.C. 7:27-30.17 Geographic scope of trading

This section contains the constraints on directionality and distance for trades. To summarize:
A user source located in New Jersey may use a NO_x DER credit if the generator source is located:
(1) anywhere in New Jersey,
(2) outside New Jersey but in the same Air Quality Control Region as the user source, or
(3) outside New Jersey in a directionally correct area, south and/or west of New Jersey.

A user source located in New Jersey may use VOC DER credits if the generator source is located:
(1) anywhere in New Jersey, or
(2) outside New Jersey but in the same Air Quality Control Region as the user source.

In addition, a DER credit generated in another state may be used in New Jersey only if the other state has regulations that require trading information be sent to New Jersey's Registry, and prevents a user source from using DER credits generated in New Jersey if the user source is located to the south and/or west of New Jersey in an air quality control region which does not include any part of New Jersey. Interstate trading can only take place if an agreement exists between New Jersey and the other state which satisfies applicable EPA requirements and provides for the sharing of information.

An "air quality control region," is defined as an area which the EPA has designated as a nonattainment or attainment area under section 107 of the Act or a contiguous area which the EPA has not designated. The following are the air quality control regions for ozone nonattainment areas including parts of New Jersey:

(1) **Allentown-Bethlehem-Easton Area--**
New Jersey - Warren County
Pennsylvania - Carbon, Lehigh, and Northampton Counties

(2) **Atlantic City Area--**
New Jersey - Atlantic and Cape May Counties

(3) **New York-Northern New Jersey-Long Island Area--**
New Jersey - Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, and Union Counties
New York - Bronx, Kings, Nassau, New York, part of Orange consisting of Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick, Woodbury; Queens, Richmond, Rockland, Suffolk, and Westchester Counties

Connecticut - all of Fairfield County except Shelton City

(4) **Philadelphia-Wilmington-Trenton Area--**

New Jersey - Burlington, Camden, Cumberland, Gloucester, Mercer, and Salem Counties

Pennsylvania - Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties

Delaware - Kent and New Castle Counties

Maryland - Cecil County

Please refer to ***Attachment 1*** for a map showing the nonattainment areas which lie in whole or in part in New Jersey.

N.J.A.C. 7:27-30.18 Recordkeeping

This section requires generators and users of DER credits to maintain records regarding DER credits, until five years after the DER credits are used. The user must retain all of the notices submitted to the Registry and/or the NJDEP (including the Notice and Certification of DER Credit Generation, the Notice of Intent to Use DER Credits, and the Notice and Certification of DER Credit Use), and all supporting information used to quantify and document the generation and use. The generator must retain the Notice and Certification of DER Credit Generation, and the supporting information. A generator, verifier or user shall provide the NJDEP with information within 15 days of a request by the NJDEP.

N.J.A.C. 7:27-30.19 Public availability

This section specifies all information submitted to the NJDEP or to the Registry will be public record. In addition, interested persons may obtain documentation and supporting information required or relied on for DER credit generation or use from the generator or user.

N.J.A.C. 7:27-30.20 Emission quantification protocols

This section establishes requirements for emission quantification protocols. A quantification protocol is a method to determine the quantity of DER credits generated or the quantity of DER credits needed for compliance. Typically, a protocol specifies the measurement methods, monitoring methods, calculation procedures, and documentation requirements for estimating or measuring an emissions source's actual and baseline emissions.

Generators and users generally would apply a protocol without first having the NJDEP review and approve it. If the NJDEP approves a protocol, it will be made publicly available for use. The verifier would be responsible for confirming that the protocol is applicable and that it satisfies the protocol requirements of Subchapter 30.20.

The generator follows a protocol to demonstrate that the DER credits generated are real, surplus, and properly quantified. The protocol will require the generator to establish that the DER credits are real and surplus by describing the actions taken to reduce emissions to generate DER credits, the degree to which the emission reduction is already relied upon in the SIP, and whether the actions taken to reduce emissions from the generator

source may increase emissions elsewhere (for example, through shifting activity or emissions to other equipment or facilities). The protocol will also require the generator to establish that the DER credits are properly quantified, by establishing and documenting the generator source's baseline emissions and actual emissions, economic output, adjusting if necessary for differences in emission rates caused by differences in activity level during the baseline period and the generation period.

The user follows a protocol to demonstrate that the amount of DER credits needed for compliance is properly quantified. Pursuant to a stationary source protocol, the user will describe the requirements that it will comply with by using DER credits, and establish and document the user source's baseline emissions and actual emissions.

The determination of a stationary source's baseline emissions in some cases, and actual emissions in all cases, requires that the source's emissions be measured or calculated. Subchapter 30.20(f) lists the methods to be used. The preferred method is to use a continuous emissions monitoring system (CEMS). However, the expense of using a CEMS is justified only if permit conditions or other applicable regulations would require CEMS independently of the DER credit generation or use. For sources which are not required to use CEMS, the rule lists several alternative methods in order of preference. The generator or user must use the first method on this list which applies to the source.

For mobile source generators or users, NJDEP requires the use of an emission quantification protocol which complies with all applicable guidance issued by EPA concerning mobile source protocols. If EPA approves a protocol for a specific class of mobile sources, the generator or user must use that protocol.

N.J.A.C. 7:27-30.21 Compliance responsibilities

In any enforcement action for a violation of the rules, a generator, user or verifier will have the burden of proof on each of their respective responsibilities. A generator will have the burden of proving that DER credits are real, surplus and properly quantified. A verifier will have the burden of proving that each of the statements made in the Notice of Verification are true, accurate and complete. A user will have the burden of proving that its use of DER credits complies with all the requirements of DER credit use, including the DER credits were verified before use and invalid DER credits were replaced.

N.J.A.C. 7:27-30.22 Penalties

This section states persons who violate these rules are subject to civil administrative penalties authorized under N.J.A.C. 7:27A-3 and applicable criminal penalties including, but not limited to, those contained in N.J.S.A. 2C:28 and N.J.S.A. 26:2C-19(f)1 and 2.

Appendix A: Emissions Included in Emissions Inventory

This Appendix to Subchapter 30 contains the New Jersey State emissions inventory current as of the date of adoption of the Subchapter, as of August 2, 1996. This Appendix is referenced in Subchapter 30.6(c) on DER credit generation limitations.

Section III.A.1.a. Correction Notice - August 5, 1996

On August 5, 1996, NJDEP published a correction notice in the New Jersey Register at 28 N.J.R. 3786(b). This correction notice corrected the method of computing DER credit generation in Subchapter 30.5. The administrative change gives instructions for a generator to follow when the source's emission rate is expressed as a "quantity of VOC or NO_x per unit of time."

Section III.A.1.b. Correction Notice - November 18, 1996

On November 18, 1996, NJDEP published a correction notice in the New Jersey Register at 28 N.J.R. 4959(b). This correction notice corrected the method of computing DER credit use in Subchapter 30.12. The administrative change removed the term "economic output" and replaced "actual emission rate" with "actual emissions" and replaced "baseline emission rate" with "baseline emissions". These revised terms have to be used in order to achieve a correct result when using the formula to calculate the amount of DER credits needed for compliance. The NJDEP intended to clarify these terms in the adoption of Subchapter 30, but the corrections were inadvertently omitted. Corresponding changes were made in Subchapter 30.20 to be consistent with changes to Subchapter 30.5 and 30.12.

Section III.A.1.c. Correction Notice - June 2, 1997

On June 2, 1997, NJDEP published a correction notice in the New Jersey Register at 29 N.J.R. 2561. This correction notice announced NJDEP's selection of the Mosakin Corporation as the operator of the Registry for the OMET Program. Minor changes corresponding to the selection of Mosakin were made to Subchapter 30.3 and 30.8.

Section III.A.2. Amended Rules -- Subchapters 3, 16, 18, 19 and 22

The new Subchapter 30 affects the NJDEP's implementation of existing rules elsewhere in its Administrative Code. Therefore, amendments were made to those existing rules to reflect the changes resulting from the new Subchapter 30.

Subchapter 3 -- Civil Administrative Penalties and Requests for Adjudicatory Hearings

N.J.A.C. 7:27A-3.10 establishes civil administrative penalties for violations of rules adopted pursuant to the Air Pollution Control Act. The amendments to N.J.A.C. 7:27A-3.10(m)30 revise the penalty schedule to reflect the new rule Subchapter 30. In establishing the penalty amounts, the NJDEP applied the following criteria: (1) the potential or actual health and environmental impacts of the violation, if any; (2) the deterrent value of the penalty and whether the penalty amounts are appropriate to ensure compliance with Subchapter 30; and (3) consistency with penalties in N.J.A.C. 7:27A-3 for violations of other comparable rules in N.J.A.C. 7:27. For example, penalties for violations of reporting requirements correspond to existing penalty amounts in N.J.A.C. 7:27A for similar violations of N.J.A.C. 7:27.

In some cases, a user's failure to comply with Subchapter 30 may prevent the use of DER credits for compliance with an emission limit. In such cases, if the user exceeds the emission limit it would be in violation of

existing provisions of N.J.A.C. 7:27 (such as Subchapters 16 or 19); the existing rules contain penalties for such violations.

The amendments to Subchapters 16 and 19 also require DER credit use in certain circumstances. The amendments to the penalty schedule add penalties for violations of these requirements.

Lastly, amendments to 7:27A-3.10(i) allow NJDEP to accept DER credits in full or partial settlement of a monetary penalty for NO_x or VOC violations of Subchapters 8, 16, 19, 22 and 30. NJDEP will consider whether the cost of acquiring DER credits provides a sufficient deterrent to future violations.

Subchapter 16 – Control and Prohibition of Air Pollution by Volatile Organic Compounds

N.J.A.C. 7:27-16 establishes the requirements for sources of VOC emissions to implement reasonably available control technology. Amendments to Subchapter 16.1A allow for the use of DER credits to comply with a VOC emission limit, in accordance to Subchapter 30.

NJDEP may approve an alternative VOC control plan for an emissions source. The alternative would be less stringent than the rate which would normally apply to the source under the VOC RACT rules. If the NJDEP approves such an alternative after August 2, 1996, the owner or operator of the emissions source in question must obtain DER credits to compensate for the difference between the alternative rate and the RACT rate. Amendments to Subchapter 16.17(m) incorporate this requirement.

Subchapter 18 – Control and Prohibition of Air Pollution From New or Altered Sources Affecting Ambient Air Quality (Emission Offset Rule)

N.J.A.C. 7:27-18 establishes the requirements for new or modified sources to obtain emission offsets under the New Source Review program. Amendments to Subchapter 18.2A allow a person to use DER credits as emission offsets, in accordance with the requirements of Subchapter 30.

Subchapter 19 – Control and Prohibition of Air Pollution From Oxides of Nitrogen

N.J.A.C. 7:27-19 establishes the requirements for sources of NO_x emissions to implement reasonably available control technology. Amendments to Subchapter 19.3 allow for the use of DER credits to comply with a NO_x emission limit, in accordance to Subchapter 30.

NJDEP may approve an alternative maximum allowable NO_x emission rate for an emissions source. The alternative would be less stringent than the rate which would normally apply to the source under the NO_x RACT rules. If the NJDEP approves such an alternative after August 2, 1996, the owner or operator of the emissions source in question must obtain DER credits to compensate for the difference between the alternative rate and the RACT rate. Amendments to Subchapter 19.13(i) incorporate this requirement.

Under Subchapter 19.23, the owner or operator of a source subject to NO_x RACT requirements can comply with those requirements by implementing innovative control technology. The source is not expected to achieve full compliance with the NO_x emission limits established elsewhere in Subchapter 19 by the normal

deadline of May 31, 1995. Instead, the source is expected to achieve greater NO_x emission reductions at a later date. Under the amendments to Subchapter 19.23(e), if the source fails to fully achieve the greater NO_x emission reductions, it must use DER credits to make up the difference between what was promised and what was actually achieved.

Subchapter 19.24 allows electric generators to increase NO_x emissions during a maximum emergency generation (MEG) alert, but requires the owner or operator of the source to obtain offsetting emission reductions at a ratio of 1.3 to 1. The amendments to Subchapter 19.24(c) clarify that those offsetting emission reductions would be in the form of DER credits.

Subchapter 22 – Operating Permits

N.J.A.C. 7:27-22 governs New Jersey's operating permits program required under Title V of the Act. The amendments to Subchapter 22 allow permittees to use DER credits for compliance in certain circumstances without the need for case-by-case approval. For example, if a new rule establishing a lower emission limit takes effect (and is incorporated into a facility's operating permit), the permittee could use DER credits to meet that lower limit without obtaining case-by-case approval from NJDEP.

The amendments to Subchapter 22 also make it clear that provisions and procedures intended to apply only to intra-facility emission averaging (under N.J.A.C. 7:27-22.28B) do not apply to open market emissions trading.

The use of DER credits could trigger requirements for seven-day notices under Subchapter 22.22, and for revisions to a facility's compliance plan under Subchapter 22.16. The amendments to Subchapter 22.22 would eliminate duplicative paperwork by allowing permittees to satisfy these requirements by submitting a copy of the Notice of Intent to Use DER credits to the NJDEP's operating permits program.

Section III.A.3. Memorandum of Understanding Between New Jersey and Connecticut

As part of the OMET SIP submittal, NJDEP submitted a Memorandum of Understanding (MOU) between the States of Connecticut and New Jersey. NJDEP submitted this MOU as supplemental information to support the OMET SIP submittal.

In June 1995, the State of Connecticut and the State of New Jersey signed a MOU on the interstate trading of continuous and discrete emission reduction credits. The MOU sets forth certain responsibilities for each State with respect to the use and creation of emission reduction credits. The main conditions of the MOU are as follows:

(1) Discrete and continuous emission reductions which have been verified by the State (VERs) in which they were generated to be real, surplus at the time they were generated and appropriately quantified may be used in either of the States in accordance with the rules and policies on the use of VERs in the State in which they are used.

(2) The State in which the VERs are generated will strictly enforce all conditions of the permit, order and/or rule pursuant to which the VERs are generated. Each State agrees to fully exercise its authorities to this

end.

(3) Enforcement will be aided by close cooperation between the two States and, therefore, the States will share all information regarding monitoring, approval and enforcement programs, as well as the technical protocols and methodologies used in quantifying VERs.

(4) All VERs shall be discounted at a minimum by ten percent prior to use, unless the VERs are being used to meet New Source Review emission offset requirements, where the VERs are subject to the offset ratios in the Act.

(5) Use of discrete VERs, generated in a different nonattainment area than the one in which they are to be used, will be allowed only if the directionality of the VER transfer is consistent with improving air quality.

(6) A common Registry of emission reductions verified and used will be maintained on an electronic bulletin at a mutually acceptable location. Each State will provide the other with an annual report of the emission reductions verified and used within the State.

(7) Final determinations on the ability of sources to use discrete or continuous VERs to comply with applicable state air quality regulatory requirements shall be the responsibility of the State in which the user source is permitted or registered.

In March 1997, Connecticut and New Jersey clarified their interpretation of the MOU, since the 1995 MOU was signed before adoption of NJDEP's OMET Program in July 1996. In general, the States concurred the 1995 MOU did not need to be modified to recognize NJDEP's OMET Program, but certain procedures would need to be followed. New Jersey posts the generation, transfer and use on the OMET Registry and covers the creation aspects of DER credits in NJDEP's enforcement procedures. Connecticut examines any discrete emission reduction credits in a public process before allowing for their use in Connecticut. Connecticut enforces credit user requirements and if any problems are discovered with emission reduction generation or verification, they will notify New Jersey. Connecticut requires Connecticut sources to maintain the serial numbers assigned by New Jersey and provide information on credit purchase, transfer, use or retirement to NJDEP/Registry.

Section III.A.4. DER Credit Generation Strategies from May 1, 1992 through August 2, 1996

As part of the OMET SIP submittal, NJDEP submitted ten applications for DER credit generation strategies from May 1, 1992 through August 2, 1996. NJDEP submitted these DER credit generation strategies to EPA as supplemental information to support the OMET SIP submittal, since these strategies represent DER credits generated before the OMET Program became operative on August 2, 1996. These strategies were submitted to NJDEP pursuant to Subchapter 30.6(b)(2). The following table summarizes the ten strategies for DER credit generation. ***Section III.B.4.*** provides a description of EPA's review of the ten credit generation strategy.

DER Credit Generator	Source Sector	Pollutant	Generation Strategy	Generation Period	Tons of Reductions	DER Credits *
Conectiv (Atlantic Energy, Inc.)	Stationary	NO_x	Increased Control	5/4/93 - 5/28/93	47	940
				1/6/94 - 3/29/94	248	4,960

DER Credit Generator	Source Sector	Pollutant	Generation Strategy	Generation Period	Tons of Reductions	DER Credits *
				Total:	295	5,900
GPU Genco (JCP&L)	Stationary	NO_x	Increased Control	4/1/96 - 8/2/96	25	500
PSE&G	Stationary	NO_x	Increased Control and Change in Fuel	1/1/94 - 12/31/94	7,751	155,020
				5/1/95 - 12/31/95	1,219	24,380
				1/1/96 - 8/2/96	698.4	13,968
				Total:	9,668.4	193,368
Onsite SYCOM Energy Corporation	Stationary	NO_x	DSM	5/1/92 - 12/31/92	2.6	52
				1/1/93 - 12/31/93	11.2	224
				1/1/94 - 12/31/94	31.1	622
				1/1/95 - 12/31/95	52.2	1,044
				1/1/96 - 7/31/96	38.5	770
				Total:	135.5	2,712
BASF Corporation	Stationary	VOC	Increased Control	6/24/94 - 6/24/95	31.4	628
				6/24/95 - 6/24/96	31.4	628
				6/24/96 - 8/2/96	2.62	52
				Total:	65.42	1,308
Hoffman-LaRoche Inc.	Stationary	VOC	Leak Detection and Repair	6/1/93 - 8/31/93	44.5	890
Interbake Foods Inc.	Stationary	VOC	Product Reformulation	9/1/94 - 12/31/94	0.25	5
				1/1/95 - 12/31/95	0.60	12
				1/1/96 - 8/2/96	0.35	7
				Total:	1.20	24
Unifoil Corporation	Stationary	VOC	Product Reformulation	5/1/92 - 12/31/92	2.40	48
				1/1/93 - 12/31/93	9.30	186
				1/1/94 - 12/31/94	9.85	197
				1/1/95 - 12/31/95	13.20	264
				1/1/96 - 8/2/96	5.50	110
				Total:	40.25	805
US Can Company	Stationary	VOC	Increased Control	4/1/96 - 8/2/96	12.55	251

DER Credit Generator	Source Sector	Pollutant	Generation Strategy	Generation Period	Tons of Reductions	DER Credits *
Clean Air Action Corp.	Mobile	VOC	Low-RVP Fuel	6/15/93 - 9/15/93	8.51	170
				7/1/94 - 9/15/94	19.16	383
				Total:	27.67	553

* according to information submitted with SIP revision and in some cases, from the Notices in the Registry.

Section III.A.5. April 10, 2000 Supplement to the Submittal

On April 10, 2000, NJDEP submitted a SIP revision to EPA containing amendments to Subchapter 30, the Open Market Trading Program regulation. EPA is including two provisions of the amended Subchapter 30 SIP revision as a supplement to the October 27, 1998 SIP revision. These two specific provisions relate to allowing municipal waste combustors to use DER credits to comply with certain Federal NO_x emission standards, as these Federal rules specifically acknowledge the ability of New Jersey owners and operators to comply with the Federal NO_x standard using DER credits. New Jersey amended Subchapter 30 as follows:

- Existing N.J.A.C. 7:27-30.13 "DER credit use: required, authorized and prohibited uses" was renumbered as 30.14.
- Existing N.J.A.C. 7:27-30.13(b) was amended at 30.14(c)(6) to state authorized uses include "municipal waste combustors subject to 40 CFR Part 60, Subpart Cb, compliance with the NO_x requirements established pursuant to that subpart. (This does not apply however to a Standard of Performance for New Stationary Sources (commonly referred to as a New Source Performance Standard or NSPS) established under 42 U.S.C. §7411.)"
- Existing N.J.A.C. 7:27-30.13(d)(2) was amended at 30.14(h)(2) to state prohibited uses include to comply with "standards for solid waste combustion under 42 U.S.C. §7429 (except for a municipal waste combustor subject to 40 CFR 60, Subpart Cb, using DER credits for compliance with NO_x requirements pursuant to (c)(6) above.)"

EPA is including these provisions as part of the rulemaking for the October 27, 1998 SIP revision to make these provisions federally-enforceable and therefore available as an option for sources in New Jersey to meet the December 19, 2000 final compliance date for Increment 5 of 40 CFR 62.14108(a)(5) of Subpart FFF.

Section III.B. EPA's Review of the Submittal

Section II.B. of this TSD discussed EPA's basis for evaluating the NJDEP's OMET Program. This Section discusses how NJDEP's OMET Program satisfies the EIP Guidance, the Open Market Trading Guidance and other approval guidance.

Section III.B.1. Economic Incentive Program Guidance

EPA's Economic Incentive Program (EIP) Guidance is contained in 40 CFR Part 51, Subpart U. Each table presents the EIP requirement, followed by the related provisions of New Jersey's OMET Program intended to meet the EIP requirement and, lastly, by EPA staff's recommendations on approvability of the State's

provisions. A 'checkmark' (**T**) means NJDEP's OMET program meets EPA's requirement. An 'x-mark' (**X**) means NJDEP's OMET program does not meet EPA's requirement.

TABLE 1.

EPA Requirement: 40 CFR 51.490 (b) Applicability -- "The provisions contained in these rules, except as explicitly exempted, shall also serve as the EPA's policy guidance on discretionary EIP's submitted as implementation plan revisions for any purpose other than to comply with the statutory requirements specified in paragraph (a) of this section."
State Provisions: NJDEP's OMET Program, which the State adopted on June 3, 1996, was submitted as an implementation plan revision. The OMET Program is a state-wide economic incentive program and is subject to the guidance promulgated by the EPA at 40 CFR 51, Subpart U.
Approvability: EPA staff recommendation: NJDEP's OMET Program meets this requirement. **T**

TABLE 2.

EPA Requirement: 40 CFR 51.491 Definitions – Section 51.491 defines a number of terms related to EIPs.
State Provisions: NJDEP's OMET Program contains definitions in Subchapter 30.2 and where appropriate the definitions are consistent with those in 51.491.
Approvability: The definition for "State Implementation Plan (SIP)" in Section 7:27-30.2 is not consistent with the definition in the EIP. Section 7:27-30.2 defines the SIP as the plan " . . . *submitted* by the State to the EPA." 40 CFR 51.491 defines SIP as a plan developed by the State, and " . . . *approved by EPA*." EPA understands the intent behind the definition in Subchapter 30 was to create a more stringent regulation. New Jersey's intention behind defining the 'SIP' as "those plans submitted to EPA," was to not limit the 'SIP' to only "those plans approved by EPA." (At the time New Jersey adopted their OMET Program, Region 2 did not yet complete SIP actions on various RACT regulations.) However, the definition of "surplus" addresses this intent. **Therefore, NJDEP should revise the definition of 'SIP' to be consistent with the definition in the EIP.** The definition for "Surplus" in Section 7:27-30.2 is not consistent with the definition in the EIP. Section 7:27-30.2 defines surplus to mean " . . . with respect to emission reductions used for the generation of DERs, not required pursuant to any air quality emission limit or standard in any applicable law, regulation, permit, or order and not relied upon in a SIP." 40 CFR 51.491 defines surplus to mean " . . . emission reductions in excess of an established program baseline which are not required by SIP requirements or State regulations, relied upon in any applicable attainment plan *or demonstration, or credited in any RFP or milestone demonstration* so as to prevent the double-counting of emission reductions." EPA interprets the definition in Subchapter 30 to include the items listed in the EIP, however, **NJDEP should revise the definition of 'surplus' to be consistent with the definition in the EIP**. EPA would like to provide clarification on the definition of VOC in section 7:27-30.2. The terms which discuss appropriate test methods, "*...approved in writing by the Department and are acceptable to EPA*," do not present a director discretion issue, since EPA, not the State, has the final decision on an acceptable VOC test method. The definition requires EPA-approved test methods in the majority of cases. The language above speaks to a small number of different test methods, which still must be acceptable to EPA. This definition recognizes the need for EPA-approval of test methods, but also recognizes the need for the use of other test methods in limited cases. The term "acceptable to EPA" is intended to mean a SIP-approval, but gives us and the State the necessary flexibility to allow for deviations from a test method in limited cases. Historically, Region 2 has allowed for a less formal process, but this less formal process has rarely occurred. Also, this procedure is not unique to New Jersey, but similar to procedures for some NSPS and other test methods. EPA staff recommendation: NJDEP's OMET Program meets this requirement. **T**

TABLE 3.

EPA Requirement: 40 CFR 51.492(d) State Program Election and Submittal -- "Any State may at any time submit a plan or plan revision to implement a discretionary EIP..... The plan revision shall not interfere with any applicable requirement

concerning attainment and RFP, or any other applicable requirements of the Act."

40 CFR 51.493 State Program Requirements – "EIPs shall be State and federally enforceable, nondiscriminatory, and consistent with the timely attainment of the NAAQS, all applicable RFP and visibility requirements, applicable PSD increments, and all other applicable requirements of the Act, as described more specifically below in the program elements."

State Provisions: NJDEP's OMET rule, Subchapter 30, applies only to NO_x and VOC emissions and is relevant only to reasonable further progress (RFP) toward, and attainment of, the National Ambient Air Quality Standards (NAAQS) for ozone. NJDEP concluded the OMET Program will not interfere with ozone attainment and RFP requirements based on the following:

(1) The NJDEP anticipates that in each ozone season the number of DER credits generated will be equal to or greater than the number used. See ***Attachment 2*** for a summary of DER credit generation and use to date, from 1992 through 1998. Verification that this continues to be the case will be included in the program audit to be conducted no less frequently than every three years;

(2) The calculation of the number of DER credits needed for use is conservative. The OMET Rule requires that whenever DER credits are used, the credits used will include ten percent which are permanently retired. In other words, for an emission source to compensate for nine tons of emissions increases, the source must purchase and 'use' ten tons worth of DER credits;

(3) The OMET rule specifically prohibits emissions reductions from being counted as DER credits if the emission reductions are already relied on in a SIP or if the reductions are required by the Act, or other federal or state law, regulation, permit or order. (See the definition of "surplus" in N.J.A.C. 7:27-30.2 and related provisions at N.J.A.C. 7:27-30.6(a)3.) Counting reductions twice (double-counting), once in the SIP and again as a DER credit, would interfere with ozone attainment or RFP requirements. The OMET Program prohibits double-counting;

(4) The OMET rule at N.J.A.C. 7:27-30.6(c) requires that before an emissions reduction can be the basis for generating a DER credit, the generator source's emissions must be reflected in New Jersey's emissions inventory SIP submittal or in New Jersey's annual major point source emissions inventory. This ensures that trading is based on only those emissions which have been taken into account in the development of the SIP.

(5) The voluntary emissions reductions expected to occur as a result of the OMET rule have not been accounted for in the projection inventory or control inventory of New Jersey's SIP. Therefore, any emission reductions gained through generation of DER credits under the OMET rule will, should these credits remain unused, be "extra" emission reductions above and beyond this projection.

(6) The OMET rule at N.J.A.C. 7:27-30.1(b) announces to all OMET Program participants that: "Nothing in this subchapter affects the applicability of the requirements of any other law, regulation, order or permit." This provides assurance that the OMET Program will not interfere with any other applicable requirements of the Act.

Approvability: The provisions in NJDEP's OMET Program and the additional documentation provided by NJDEP demonstrates that the use of DER credits for compliance, including the use of one-time or carry over credits during time periods other than when they were generated (i.e., the intertemporal use of credits), was and is consistent with the requirements of the New Jersey SIP, RFP and ROP plans, and area-wide RACT requirements since 1995. The documentation includes an accounting of the NO_x and VOC DER credits generated, used, transferred, retired, verified and invalidated in New Jersey from May 1995 to September 1998 and shows that there was no increase in NO_x or VOC emissions, or "spiking," due to the use of credits for compliance. **In fact, New Jersey's documentation (which in essence was a type of audit) clearly shows the quantity of credits created during the ozone seasons from 1992 to 1998 were far greater than the quantity used.** To summarize, 446,167 NO_x DER credits were generated, while only 3,207 DER credits were used; for VOC, 6,783 DER credits were generated and only 112 were used for compliance. Also, more credits have been used during the non-ozone seasons from 1992 to 1998 than have been used in the ozone seasons. Most importantly, more credits have been retired than have been used for compliance. **From 1992 to 1998, while 3,207 NO_x DER credits and 112 VOC DER credits have been used for compliance, 15,760 NO_x DER credits and 455 VOC DER credits have been retired, never to be used again.** Note these retired DER credits do not include the ten percent of credits retired at the time of use.

There are also a number of characteristics in NJDEP's RACT program which, although not quantified at this time, could be considered as acting as a "spiking buffer" for the intertemporal use of credits at some sources and helping to ensure that RACT and RFP are maintained. First, some of the credit is generated from units which are using additional controls to permanently keep emissions at levels well below their limits. Since some or all of this credit is not used during the season/year that it is generated, it provides a buffer against spiking during that time. Second, most sources operate below the required emission rate limitations, creating a compliance margin of emission reductions which are not assumed in the SIP. This aggregate compliance margin could be quantified relatively easily for sources with continuous emission monitoring systems in particular. Although concerns have been expressed to EPA about allowing this type of margin to be treated as an individual facility's credit, the aggregate can be viewed as buffering intertemporal credit use statewide regardless of whether we would ever approve a facility's margin as tradeable. Furthermore, NJDEP has attempted to deal with the question of the 'creditability' of the compliance margin on a trade-by-trade basis by requiring that a minimum of 10% of credit be retired upon creation and that credit users meet an emission limit which is at least 5% lower than the RACT limits. Also, NJDEP requires sources that receive an alternative RACT limit or compliance date extensions to compensate for the increased emissions by acquiring DER credits, as discussed in ***section III.A.2***. of this TSD.

NJDEP's OMET Program, while reducing the cost to industry and regulators of clean air compliance, also provides additional environmental benefits:

(1) Generators create early reductions by reducing emissions before the DER credits are traded and used;

(2) The generation or the use of DER credits which are accompanied by more than a de minimis increase in Hazardous Air Pollutant (HAP) emissions is prohibited. Accordingly, no negative environmental impact concerning HAP emissions should result from the Program;

(3) Sources that are not directly subject to VOC or NO_x emission limits can generate DER credits. For example, an employer trip reduction plan under N.J.A.C. 16:50, or the implementation of electrical energy efficiency measures, can result in the generation of DER credits. The opportunity to create DER credits through such measures is an incentive to implement them, making it more likely that such measures will be taken.

The Clean Air Act requires states to have an emissions inventory that specifically accounts for actual emissions of all major stationary sources and minor/area source categories. EPA's General Preamble guidance to the Act also requires the inventory to consider credits available for use as if they are "in the air" for all attainment demonstrations. Therefore all attainment modeling demonstrations must include all unused credits, that can eventually be used, as actual emissions. While this can "inflate" an area's actual emissions inventory above the level of what will probably occur, it does not inflate emissions above what could potentially occur. For emission trading purposes, EPA has and continues to require that attainment, reasonable further progress and rate-of-progress demonstrations use a worst-case emissions scenario. This is to discourage the accumulation of enormous banks of credits that could potentially ruin any attainment plan or demonstration if the credits were all used at the same time. **New Jersey must submit to EPA additional information on how the emission inventories account for unused credits under New Jersey's OMET Program.**

Given NJDEP's documentation and the provisions of its OMET Program, EPA believes that New Jersey has shown that the quantity of NO_x and VOC reductions being achieved by the State's other regulations is at least as great as would have been achieved without the OMET Program. Furthermore, given the inherent buffering characteristics of the RACT program, the SIP attainment and RFP requirements will also continue to be met. Based upon these analyses and documentation, EPA believes that NJDEP's OMET Program will not interfere with any applicable requirement concerning attainment and RFP, or any other applicable requirements of the Act.
EPA staff recommendation: NJDEP's OMET Program meets this requirement with the exception of unused credits in the inventory. X

TABLE 4.

EPA Requirement: 40 CFR 51.493(a) Statement of goals and rationale -- "This element shall include a clear statement as to the environmental problem being addressed, the intended environmental and economic goals of the program, and the rationale relating the incentive-based strategy to the program goals."
State Provisions: The entire State of New Jersey is within air quality control areas that are in nonattainment of the NAAQS for ground-level ozone. The primary goal of NJDEP's OMET Program is to provide a mechanism to enable New Jersey to meet the regulatory standards in rules adopted to make more cost-effective progress toward attaining the NAAQS for ozone.

NJDEP's OMET Program allows the owners and operators of industrial sources and other regulated entities more options for complying with applicable air pollution control requirements and therefore provides them the benefit of greater flexibility and/or lower cost. The intended environmental goal of NJDEP's OMET Program is to provide this economic benefit in a manner that supports, but does not interfere with, New Jersey's progress toward attainment of the NAAQS for ozone.

Approvability: EPA staff recommendation: NJDEP's OMET Program meets this requirement. **T**

TABLE 5.

EPA Requirement: 40 CFR 51.493(a)(1) -- "This statement of goals must include the goal that the program will benefit both the environment and the regulated entities. The program shall be designed so as to meaningfully meet this goal either directly, through increased or more rapid emissions reductions beyond those that would be achieved through a traditional regulatory program, or, alternatively, through other approaches that will result in real environmental benefits. Such alternative approaches include, but are not limited to, improved administrative mechanisms, reduced administrative burdens on regulatory agencies, improved emissions inventories, and the adoption of emission caps which over time constrain or reduce growth-related emissions beyond traditional regulatory approaches."

State Provisions: While the goal of the OMET Program is to benefit regulated entities, NJDEP expects it will benefit the environment as well. NJDEP's OMET Program was promulgated pursuant to a statutory mandate signed by the Governor on August 2, 1995, set forth in New Jersey Public Law 1995, c.188, § 8, N.J.S.A. 26:2C-9.8. This law directed NJDEP to promulgate rules for an emissions trading program which:

(1) Use economic incentives to make progress toward the attainment or maintenance of the NAAQS;
(2) Reduce or prevent emissions of air contaminants;
(3) Ensure healthful air quality, or otherwise contribute to the protection of human health, welfare and the environment from air pollution; and,
(4) Realize emissions reductions earlier or at a more accelerated rate than would otherwise be achieved in accordance with applicable air quality mandates.

In accordance with "(1)" above, NJDEP designed the OMET Program to be an instrument which would help achieve progress toward attainment of the NAAQS for ozone by providing compliance options to regulated entities as they seek to meet the standards set in other air quality rules. Having these compliance options should enable many regulated entities to lower compliance costs and/or have greater flexibility in how they achieve compliance. By providing these benefits, the OMET Program creates the economic incentives directed towards preserving the political will necessary to continue to achieve the emission reductions needed to meet the NAAQS for ozone.

If affected parties find it less costly and less burdensome to comply with new standards, the degree of compliance and the timeliness of compliance should increase. In this way, NJDEP's OMET Program will help reduce or prevent emissions (per "(2)" above) and help ensure more healthful air quality (per "(3)" above).

The OMET rule itself may also directly provide environmental benefits. For example, it may provide incentives for early emission reductions (per "(4)" above) and/or voluntary emission reductions based on company-identified emission reduction opportunities which the State may not even be aware. Also, some DER credits are likely to remain on the Registry indefinitely or be retired. More thorough quantification of emission reductions and increases may occur and have the ancillary benefit of improving reporting and emission inventories. Also, the OMET Program provides a mechanism for violators to compensate for emission exceedances. However, whether these potential direct benefits will in fact result in significant environmental improvement remains to be demonstrated.

Approvability: EPA staff recommendation: NJDEP's OMET Program meets this requirement. **T**

TABLE 6.

EPA Requirement: 40 CFR 51.493(a)(2) -- "The incentive-based strategy shall be described in terms of one of the following three strategies: .....(ii) Market-response strategies, which create one or more incentives for affected sources to reduce emissions, without directly specifying limits on emissions or emission-related parameters that individual sources or even all sources in the aggregate are required to meet....."

State Provisions: The New Jersey OMET Program is a market-response strategy as defined in §51.493(a)(2)(ii) and in EPA's proposed model rule on open market trading at 60 FR 39692. The NJDEP's OMET Program provides incentives for sources to reduce their emissions, both by creating opportunities for credit generators to use credits they generate or for credit generators to trade credits and obtain payment for them. These reductions are voluntary on the part of the credit generator and are not the direct result of any limit specified by the State.

Approvability: EPA staff recommendation: NJDEP's OMET Program meets this requirement. **T**

TABLE 7.

EPA Requirement: 40 CFR 51.493(b) Program scope (1) – "This element shall contain a clear definition of the sources affected by the program. This definition shall address: (i) the extent to which the program is mandatory or voluntary for the affected sources. (ii) Provisions, if any, by which sources that are not required to be in the program may voluntarily enter the program. (iii) Provisions, if any, by which sources covered by the program may voluntarily leave the program."

State Provisions: Participation in NJDEP's OMET Program is voluntary; no person is required to be in the Program or to continue in the Program. N.J.A.C. 7:27-30.4 establishes who may generate DER credits.

NJDEP's OMET Program allows any person to hold a credit, any credit holder to transfer that credit, and any person to have any credit verified (N.J.A.C. 7:27-30.3(b)).

In addition, there are several compliance situations given at N.J.A.C. 7:27-30.13(a) in which DER credits are required to be used. These include compensation for excess VOC emissions that result from an alternative VOC plan approved after August 2, 1996, pursuant to N.J.A.C. 7:27-16.17(m); compensation for excess NO_x emissions that exceed an alternative maximum allowable emission rate approved after August 2, 1996, pursuant to N.J.A.C. 7:27-19.13(i); pursuant to N.J.A.C. 7:27-19.23(e)10, compensation for NO_x emissions that exceed the emission limit in an innovative control technology plan approved pursuant to N.J.A.C. 7:27-19.23, after the date on which the innovative control technology is required to be implemented; and compensation for emissions above permit limits during MEG alerts pursuant to N.J.A.C. 7:27-19.24(c). In addition, an Administrative Consent Order issued by the NJDEP may require DER credits to be used in lieu of payment of the penalty, in partial payment of the penalty, or as a supplement of payment of the penalty.

Approvability: EPA staff recommendation: NJDEP's OMET Program meets this requirement. **T**

TABLE 8.

EPA Requirement: 40 CFR 51.493(b) Program Scope (2) -- "Any opt-in or opt-out provisions in paragraph (b)(1) of this section shall be designed to provide mechanisms by which such program changes are reflected in an area's attainment and RFP demonstrations, thus ensuring that there will not be an increase in the emissions inventory for the area caused by voluntary entry or exit from the program."

State Provisions: There are no "opt-in" or "opt-out" provisions in the NJDEP's OMET Program. Participation is voluntary. A person that has participated in the Program in the past may simply choose not to participate in the future.

Approvability: EPA staff recommendation: NJDEP's OMET Program meets this requirement. **T**

TABLE 9.

EPA Requirement: 40 CFR 51.493(b) Program Scope (3) -- "The program scope shall be defined so as not to interfere with any other Federal requirements which apply to the affected sources."

State Provisions: See responses in ***Table 3.***

Approvability: EPA staff recommendation: NJDEP's OMET Program meets this requirement. **T**

TABLE 10.

EPA Requirement: 40 CFR 51.493(c) Program baseline -- "A program baseline shall be defined as a basis for projecting program results and, if applicable, for initializing the incentive mechanism (e.g., for marketable permits programs). The program baseline shall be consistent with, and adequately reflected in, the assumptions and inputs used to develop an area's RFP plans and attainment and maintenance demonstrations, as applicable. The State shall provide sufficient supporting information from the areawide emissions inventory and other sources to justify the baseline used in the EIP...."

State Provisions: The program baseline for NJDEP's OMET Program shall be the RFP trajectory set forth in RFPs and attainment plans submitted by the State for inclusion in New Jersey's SIP.

The NJDEP anticipates that the OMET program will have no net impact on emissions, since emissions increases from credit use will be offset by emission reductions from credit generation. Therefore NJDEP does not anticipate the implementation of this Program will have any effect on subsequent RFPs or attainment demonstrations that will be submitted by the State.

The NJDEP anticipates that the OMET program will neither contribute to, nor interfere with, any future emissions reduction requirements to be included in the SIP. The OMET rule prohibits credit generation from any emission reductions that are required by the SIP, i.e., from any reduction that is not "surplus." This provision ensures there will be no conflict between the OMET program and any future attainment demonstration submittal.

The NJDEP also does not anticipate that the OMET program will have any significant impact on the effectiveness of the VOC and NO_X RACT programs. Amendments to N.J.A.C. 7:27-16.17 and 19.13, promulgated with the OMET rule, require the use of DER credits to compensate for the difference between the emissions allowed under an alternative emissions limit and the emissions limit that would otherwise apply. However, the NJDEP's OMET Program became operative on August 2, 1996, while emission sources in New Jersey were required to meet RACT standards by May 31, 1995. NJDEP therefore anticipates that few alternative emission limits under N.J.A.C. 7:27-16.17 and 19.13 will be approved after August 2, 1996, and that these will not result in significant additional reductions due to credit use.

Approvability: EPA staff recommendation: NJDEP's OMET Program meets this requirement. **T**

TABLE 11.

EPA Requirement: 40 CFR 51.493(d) Replicable Emission Quantification Methods -- "This program element..... shall include credible, workable, and replicable methods for projecting program results from affected sources and, where necessary, for quantifying emissions from individual sources subject to the EIP. Such methods, if used to determine credit taken in attainment, RFP, and maintenance demonstrations, as applicable, shall yield results which can be shown to have a level of certainty comparable to that for source-specific standards and traditional methods of control strategy development....."

State Provisions: The NJDEP's OMET rule sets forth the standards and guidance for quantification and documentation of emission increases and decreases from individual sources participating in the Program so as to ensure that the methods used are credible, workable, and replicable. For any given period, program results may be determined by subtracting the total emission increases of participating credit users during that period from the total emission decreases realized by credit generators during that period.

The total emission increases are the sum of the increases of all individual credit users. The methods individual credit users shall use to determine and document their increases are set forth in the OMET rule at N.J.A.C. 7:27-30.12, 30.14, 30.15 and 30.20. Similarly, the total emission decreases are the sum of the decreases of all individual credit generators. The methods individual credit generators shall use to determine and document their decreases are set forth in the OMET rule at N.J.A.C. 7:27-30.5, 30.7 and 30.20.

In addition to the quantification methods set forth in the OMET rule, a number of other aspects of the OMET rule contribute to ensuring the integrity of the quantifications. Among these are:

(1) For mobile sources, the NJDEP OMET rule requires that any applicable EPA quantification guidance, once issued, shall be followed. The OMET rule makes clear at N.J.A.C. 7:27-30.16(a)5 that credit generation and credit use must be accounted for separately for the ozone season and for the rest of the year, and requires users to use only credits generated during the ozone season to compensate for any emission increases which occur during the ozone season;

(2) Generation of credits from shutdowns or production curtailment is prohibited at N.J.A.C. 7:27-30.6(a)1, and

generation of credits from "shifting demand" is prohibited at N.J.A.C. 7:27-30.5(d). Credits may be generated only when emissions per unit of economic output are below the baseline rate; this ensures that undue credit will not be given for curtailment of production;

(3) To ensure that credits are quantified to the standards required under the OMET rule, N.J.A.C. 7:27-30.8(a) and 10(a) require that only credits that have been verified to be properly quantified may be used for compliance, and that only a Certified Public Accountant (CPA) or a Professional Engineer (PE) licensed in New Jersey may preform this verification;

(4) If emission reductions used as a basis of credit generation result in emission increases elsewhere, N.J.A.C. 7:27-30.5(d) requires that these increases be subtracted from the decreases on which the credits are base; and

(5) If a source's emissions exceed an allowable limit during any part of the generation period, N.J.A.C. 7:27-30.5(e) and 30.6(a)8 prohibit any DER credit from being generated during that part of the generation period.

Approvability: ***NJDEP's OMET Program already contains the requirement that DER credits be real, surplus, and quantifiable. In addition, NJDEP's OMET Program already contains criteria for developing emission quantification protocols and requires mobile source generation and use protocols to be consistent with any applicable EPA guidance. In order to further ensure that these criteria are met, NJDEP must also incorporate into Subchapter 30.20 a requirement that if an EPA-approved protocol exists, sources must use that protocol for quantifying emission reductions at applicable sources, and to allow sources to deviate from an EPA protocol only if they first get the approval of EPA. Also, Subchapter 30.20(f)(2)(i) and (ii) reference alternative monitoring plans and test methods approved by New Jersey. New Jersey should clarify that these references are already part of the SIP, and are not Director discretion issues. Related discussion is presented in Table 13 and in section III.B.2. -- Table 51.***
EPA staff recommendation: NJDEP's OMET Program does not meet this requirement. X

TABLE 12.

EPA Requirement: 40 CFR 51.493(e) Source requirements -- "This program element shall include all source-specific requirements that constitute compliance with the program. Such requirements shall be appropriate, readily ascertainable, and State and federally enforceable, including, as applicable: (1) Emissions limits.....(ii) For emission-limiting EIPs that authorize RACT sources to meet their RACT requirements through RACT/non-RACT trading, such trading shall result in an exceptional environmental benefit....."

State Provisions: NJDEP's OMET rule relies on the emission limits established in the otherwise applicable laws, rules, and permits, and does not itself impose emission limits. Though the OMET Program is categorized as a market-response EIP and not an emissions-limiting EIP, the OMET Program does include an exceptional environmental benefit by requiring that whenever DER credits are used, the credits used will include ten percent which are permanently retired to benefit the environment.

Approvability: EPA staff recommendation: NJDEP's OMET Program meets this requirement. **T**

TABLE 13.

EPA Requirement: 40 CFR 51.493(e) Source requirements -- ".....(2) Monitoring, recordkeeping, and reporting requirements....."

State Provisions: **Monitoring** NJDEP's OMET rule establishes at N.J.A.C. 7:27-30.5, 12, and 20 that quantification shall be done in accordance with an emission quantification protocol. A quantification protocol is a method to determine the quantity of DER credits generated or the quantity of DER credits needed for compliance. An emission quantification protocol specifies the monitoring or other measurement methods as well as calculation procedures.

Under NJDEP's OMET rule, generators and users must use an emissions quantification protocol. Additionally, for credit generation, the verifier is responsible for confirming that the emissions quantification protocol used is applicable and that it satisfies the requirements of N.J.A.C. 7:27-30.20.

The generator must follow an emissions quantification protocol to demonstrate that the DER credits generated are real, surplus, and properly quantified. In the protocol the generator must establish that the DER credits are real and surplus by

describing the actions taken to reduce emissions to generate DER credits, the degree to which the emission reduction is already relied upon in the SIP. Pursuant to the protocol the generator must also establish that the DER credits are properly quantified, by establishing and documenting, pursuant to N.J.A.C. 7:27-30.20(e) the generator source's terms used to quantify the amount of DER credits generated: baseline emission rate, actual emission rate, and economic output. Proper quantification also includes reducing the amount of emission reductions to account for resulting emission increases elsewhere (for example, through shifting activity or emissions to other equipment or facilities) pursuant to N.J.A.C. 7:27-30.5(d) and for late submittal of Notices pursuant to N.J.A.C. 7:27-30.7(a).

A user must follow an emissions quantification protocol to demonstrate that the amount of DER credits needed for compliance is properly quantified. Pursuant to a stationary source emissions quantification protocol, the user must describe the requirements that it will comply with by using DER credits, and by establishing and documenting, pursuant to N.J.A.C. 7:27-30.20(e), the terms used to quantify the amount of DER credits needed for compliance: user source's baseline emissions and actual emissions as computed at N.J.A.C. 7:27-30.12(b).

To ensure the quality of the quantification method, the OMET rule at N.J.A.C. 7:27-30.20(b) requires, for mobile sources, that the data used be "the most representative, accurate, and reliable data available." For stationary sources, the OMET rule requires that methods for determining emission rates shall be selected in accordance with a hierarchy set forth at N.J.A.C. 7:27-30.20(f). The most preferred method is to use a continuous emissions monitoring system (CEMS). However, since the expense of using a CEMS is justifiable only if permit conditions or other applicable regulations would require CEMS independently of the DER credit generation and use, other alternative methods are given. The generator or user must use the first method on this list which the emissions source is required to use under any applicable Federal or State regulation or permit condition, or which is in fact being used to determine the source's emissions.

Approvability: EPA staff recommendation: NJDEP's OMET Program meets this requirement. **T**

TABLE 14.

EPA Requirement: 40 CFR 51.493(e) Source requirements -- ".....(2) Monitoring, recordkeeping, and reporting requirements....."

State Provisions: **Recordkeeping** The Notices, together with their supporting information and documentation, as specified in N.J.A.C. 7:27-30.7, 30.14, and 30.15, are the primary recordkeeping requirements of NJDEP's OMET Program for generators and users of DER credits. The requirements for retention of these records are set forth at N.J.A.C. 7:27-30.18, as is the requirement for providing these records to the NJDEP upon request. Generators and users of DER credits are required to maintain records regarding DER credits, until five years after the DER credits are used. The user must retain all of the notices submitted to the Registry and/or the NJDEP (including the Notice and Certification of DER Credit Generation, the Notice of Intent to Use DER Credits, and the Notice and Certification of DER Credit Use), and all supporting information used to quantify and document the generation and use. The generator obligation applies to each Notice and Certification of DER Credit Generation, and the supporting information.

Approvability: EPA staff recommendation: NJDEP's OMET Program meets this requirement. **T**

TABLE 15.

EPA Requirement: 40 CFR 51.493(e) Source requirements -- ".....(2) Monitoring, recordkeeping, and reporting requirements....."

State Provisions: **Reporting.** Reporting requirements are established in the OMET rule through the requirements for submission of notices. The rule at N.J.A.C. 7:27-30.7(a) requires the generator to submit a Notice and Certification of DER Credit Generation to the Registry for each batch of DER credits generated. The generator must submit the notice to the Registry within 90 days after the generation period ends.

When DER credits are transferred, the rule at N.J.A.C. 7:27-30.9(c) requires the transferor and the transferee to complete a Notice of Transfer. The transferee must submit the Notice of Transfer to the Registry.

For a batch of DER credits to be considered verified, the rule at N.J.A.C. 7:27-30.10(d) requires the verifier to complete a

Notice of DER Credit Verification and to submit the Notice to the holder of the DER credits (the person in whose account the Registry shows a DER credit is held) and to the Registry.

The rule at N.J.A.C. 7:27-30.11(e) and 14(a) requires the owner or operator of a user source to submit a Notice of Intent to Use DER Credits to the Registry at least 30 days before the use period begins. Within 30 days after the end of the use period, the rule at N.J.A.C. 7:27-30.15(a) requires the user to submit a Notice and Certification of DER Credit Use to the NJDEP as well as to the Registry.

When a DER credit is retired, the rule at N.J.A.C. 7:27-30.11(j) requires the person retiring the DER credit to complete a Notice of Retirement and submit the Notice to the Registry.

Approvability: EPA staff recommendation: NJDEP's OMET Program meets this requirement. **T**

TABLE 16.

EPA Requirement: 40 CFR 51.493(e) Source requirements -- ".....(3) Any other applicable strategy-specific requirements."

State Provisions: Geographic Scope of Trading
A user source located in New Jersey may use a NO_x DER credit if the generator source is located:
(1) anywhere in New Jersey,
(2) outside New Jersey but in the same air quality control region as the user source, or
(3) outside New Jersey in a directionally correct area, south and/or west of New Jersey.

A user source located in New Jersey may use VOC DER credits if the generator source is located:
(1) anywhere in New Jersey, or
(2) outside New Jersey but in the same air quality control region as the user source.

However, a DER credit generated in another state may be used in New Jersey only if the other state has laws or regulations that require trading information be sent to New Jersey's Registry and that require the following directionality requirements be met:

(a) A user source is prohibited from using NO_x DER credits generated in New Jersey, if the user source is located in an air quality control region which lies to the south and/or west of New Jersey and does not include any part of New Jersey, and

(b) A user source is prohibited from using VOC DER credits generated in New Jersey, if the user source is located in an air quality control region which does not include any part of New Jersey.

In addition to the above requirements, a DER credit generated in New Jersey may be used in another state, or a DER credit generated in another state may be used in New Jersey, only if an interstate trading agreement (i.e., Memorandum of Understanding) exists between New Jersey and the other state.

Refer to ***Section III.A.1.*** of this TSD which discusses Subchapter 30.17 - Geographic scope of trading and to ***Attachment 1*** for a map showing the air quality control regions that include New Jersey and the allowable NO_x and VOC trading areas.

Approvability: NJDEP's OMET rule includes source requirements on directionality and distance specific to the OMET Program. Refer to the discussion on geographic restrictions in ***Section III.B.2.*** of this TSD.
EPA staff recommendation: NJDEP's OMET Program meets this requirement. **T**

TABLE 17.

EPA Requirement: 40 CFR 51.493(f) Projected Results and Audit/Reconciliation Procedures -- "(1) The SIP submittal shall include projections of the emissions reductions associated with the implementation of the program. These projected results shall be related to and consistent with the assumptions used to develop the area's attainment demonstration and maintenance plan, as applicable. For programs designed to produce emissions reductions creditable towards RFP milestones, projected emissions reductions shall be related to the RFP baseline and consistent with the area's RFP compliance demonstration. The State shall provide sufficient supporting information that shows how affected sources are or will be addressed in the emissions inventory, RFP plan, and attainment demonstration or maintenance plan, as applicable.....(ii) For market-response programs, the projected results shall be based on market analyses relating levels of targeted emissions and/or emission-related activities to program design parameters....."

State Provisions: Neither VOC nor NO_x emissions reductions are projected to be associated with the implementation of the OMET program. Any increases in emissions associated with credit use are expected to be offset by reductions associated with credit generation. Therefore, on balance, NJDEP expects neither net emission increases nor decreases to result from the implementation of the OMET Program, and therefore will reflect no such change in its projection inventory RFP plan, and attainment demonstration.

In some cases, HAP emissions will be reduced as a result of generation or use of DER credits; and in some cases HAP emissions may be increased. However, the OMET rule prohibits the generation or use of DER credits if it is accompanied by more than a de minimis increase in HAP emissions. The de minimis levels for HAP emissions have been designated for each HAP by EPA pursuant to section 112(g) of the Act. The de minimis levels are currently set forth in the proposed rule at 59 FR 15504, April 1, 1994. If the EPA adopts a final rule or publishes a new proposed rule to designate the de minimis levels, NJDEP will revise the OMET rule to include the new EPA de minimis levels for HAP emissions. Also, the OMET rule requires that any de minimis increase in HAP emissions due to DER credit generation or use be reported in the applicable notice of generation or use (the contents of these notices are public information). Accordingly, NJDEP anticipates that there will be no significant negative environmental impact concerning HAP emission increases which result from the OMET Program, but there may be significant HAP decreases.

Approvability: Although the use of credits may be during a different period than when generated, i.e., intertemporal, the quantity of NO_x and VOC reductions being achieved by the State's other regulations is at least as great as would have been achieved without the OMET Program, as discussed in ***Table 3***. Furthermore, given the inherent buffering characteristics of the RACT program, the SIP attainment and RFP requirements will also continue to be met. Based upon these analyses and documentation, EPA agrees that NJDEP's OMET Program will not interfere with any applicable requirement concerning RACT, attainment and RFP, or any other applicable requirements of the Act.

As discussed in ***Section III.B.2.*** and ***Section III.B.3.a.***, NJDEP's OMET Program is more restrictive than EPA's guidance with respect to HAP emissions. EPA agrees there will be no significant negative environmental impact concerning HAP emission increases which result from the OMET Program.
EPA staff recommendation: NJDEP's OMET Program meets this requirement. **T**

TABLE 18.

EPA Requirement: 40 CFR 51.493(f) Projected Results and Audit/Reconciliation Procedures -- "(2) Quantitative projected results shall be adjusted through the use of two uncertainty factors, as appropriate, to reflect uncertainties inherent in both the extent to which sources will comply with program requirements and the overall program design. (i) Uncertainty resulting from incomplete compliance shall be addressed through the use of a rule compliance factor. (ii) Programmatic uncertainty shall be addressed through the use of a program uncertainty factor. Any presumptive norms set by the EPA shall be used unless an adequate justification for an alternative factor is included in supporting information to be supplied with the SIP submittal. In the absence of any EPA-specified presumptive norms, the State shall provide an adequate justification for the selected factors as part of the supporting information to be supplied with the SIP submittal."

State Provisions: (i) Uncertainty resulting from incomplete compliance by sources is addressed in several provisions of the NJDEP OMET Program. The OMET rule at N.J.A.C. 7:27-30.20 contains standards for quantification protocols, including, at N.J.A.C. 7:27-30.20(e)2, a requirement to factor in a design margin. N.J.A.C. 7:27-30.8(a) requires a DER credit to be verified prior to use. Also, The OMET rule requires users to conservatively calculate the number of credits needed for use by requiring at N.J.A.C. 7:27-30.12(b) that 10% of the credit used be retired for the environment.

(ii) New Jersey anticipates the OMET Program will have no effect on overall emissions of ozone precursors for reasons previously stated. Therefore, the requirement to have a program uncertainty factor to adjust RFP and attainment plans is not applicable.

Approvability: EPA staff recommendation: NJDEP's OMET Program meets this requirement. **T**

TABLE 19.

EPA Requirement: 40 CFR 51.493(f) Projected Results and Audit/Reconciliation Procedures -- "(3) Unless otherwise provided in program-specific guidance issued by the EPA, EIP's for which SIP credit is taken shall include audit procedures to evaluate program implementation and track program results in terms of both actual emissions reductions, and, to the extent practicable, cost savings relative to traditional regulatory program requirements realized during program implementation. Such audits shall be conducted at specified time intervals, not to exceed three years. The State shall provide timely post-audit reports to the EPA.....(ii) For market-response EIP's, reconciliation procedures that identify a range of appropriate actions or revisions to program requirements that will make up for any shortfall between credited results (i.e., projected results, as adjusted by the two uncertainty factors described above) and actual results obtained during program implementation shall be submitted together with the program audit provisions. Such measures must be federally enforceable, as appropriate, and automatically executing to the extent necessary to make up the shortfall within a specified period of time, consistent with relevant RFP and attainment requirements."

State Provisions: NJDEP will ensure that an audit is performed at least every three years which meets applicable EPA guidance and will provide timely post-audit reports to EPA. At a minimum, NJDEP will include the following elements in the audit:

- An evaluation of the net effect of the NJDEP OMET Program on actual emissions, as required at 40 CFR 51.493(f)(3);
- Verification that in each ozone season the number of DER credits generated will be equal to or greater than the number used, as discussed in ***Table 3*** and ***Attachment 1***.
- To the extent practicable, an evaluation of the cost savings, as required at 40 CFR 51.493(f)(3).

Also, the audit will determine whether there is a shortfall between the results claimed for the NJDEP OMET Program and the actual results obtained during program implementation. If there is a shortfall, NJDEP will submit to EPA, with the post-audit report, measures to remedy program deficiencies and, if applicable, measure to make up any emissions shortfall within a specified period of time consistent with relevant RFP and attainment requirements, as required at 40 CFR 51.493(f)(3)(ii).

The State anticipates that information generated by the Registry operator will be a useful source of information for the audit. The NJDEP's contract with the Registry operator requires the Registry operator to provide monthly reports to the NJDEP which contain, among other things, a list by sector (stationary, mobile, off-road, and area) of each type of generation and use, the total numbers of DER credits generated in the ozone season, total reported increases in HAP emissions, and a list of all companies that have generated, transferred, verified or used DER credits.

Approvability: The October 27, 1998 SIP submittal letter from Commissioner Shinn, contains a commitment by NJDEP to meet reasonable program audit requirements established in Federal regulations and/or guidance. Furthermore, NJDEP recognizes its responsibilities to ensure that the OMET Program, as implemented, be consistent with the State's rate of progress toward the attainment of the ozone NAAQS and not to result in continued nonattainment in downwind areas. In the July 1, 1996 Adoption Document, NJDEP also committed to an audit in the response-to-comment section and specifically referred to EPA's proposed policy on open market trading (see ***Section III.B.2.*** of this TSD).

As discussed in ***Table 31***, **New Jersey should specifically evaluate the inclusion of DSM and energy efficiency measures in the OMET Program as part of the periodic program audit.**

EPA staff recommendation: NJDEP's OMET Program meets this requirement. **T**

TABLE 20.

EPA Requirement: 40 CFR 51.493(g) Implementation Schedule -- "The program shall contain a schedule for the adoption and implementation of all State commitments and source requirements included in the program design."

State Provisions: The NJDEP's OMET Program rulemaking is being developed in two stages. In Stage 1, the basic framework of the OMET Program was developed, proposed and adopted. On February 20, 1996, NJDEP proposed in the New Jersey Register (28 N.J.R. 1147(b)) the new rules of Subchapter 30, Open Market Emissions Trading, and amendments to other rules. Notices were also published in six newspapers around the State on February 1, 2, and 6, 1996. A public hearing was held on March 7, 1996. The notices provided an opportunity for public comments until March 21, 1996. NJDEP received public comments from numerous persons, and from EPA, either in written form or at the public hearing. A comment summary and response-to-comment was included with the Adoption Document which was published on July 1, 1996 at 28 N.J.R. 3414(a). The operative date of the adopted new rules was August 2, 1996. Correction Notices to Subchapter 30 were published on August 5, 1996 at 28 N.J.R. 3786(b), on November 18, 1996 at 28 N.J.R. 4959(b), and on June 2, 1997 at 28 N.J.R. 2561.

Additionally, NJDEP has designated a private operator of the Registry serving the OMET Program. This designation became effective on June 2, 1997. Between the time that the Stage 1 OMET rule became operative (August 2, 1996) and the June 2, 1997 designation of the Registry operator, the NJDEP served as the clearinghouse for the submittal of all notices in order to provide continuity for the clear and efficient implementation and administration of the OMET program.

In Stage 2, currently in progress, the NJDEP expects to revise the OMET rule developed in Stage 1. The goals of the Stage 2 revisions are to examine ways to expand the options of generation and use of DER credits and to identify any other improvements. At the time when this document was issued, the Stage 2 implementation schedule was as follows:

Proposal: July 6, 1999
Adoption: April 17, 2000
Effective: May 15, 2000
Operative: June 6, 2000

The first audit of the OMET Program began August 2, 1999.

Approvability: On October 27, 1998, NJDEP Commissioner Shinn submitted the NJDEP's OMET Program as a SIP revision to EPA. The OMET Program SIP submittal was reviewed by EPA in accordance with the completeness criteria found at Title 40 CFR Part 51, Appendix V. Based on this review, EPA determined the SIP revision to be administratively and technically complete in a ***December 22, 1998*** letter to NJDEP. This TSD is the next step in EPA's rulemaking process. EPA staff recommendation: NJDEP's OMET Program meets this requirement. **T**

TABLE 21.

EPA Requirement: 40 CFR 51.493(h) Administrative procedures -- "The program shall contain a description of State commitments which are integral to the implementation of the program, and the administrative system to be used to implement the program, addressing the adequacy of the personnel, funding, and legislative authority. (1) States shall furnish adequate documentation of existing legal authority and demonstrated administrative capacity to implement and enforce the provisions of the EIP. (2) For programs which require private and/or public entities to establish emission-related economic incentives (e.g., programs requiring employers to exempt carpoolers/multiple occupancy vehicles from paying for parking), States shall furnish adequate documentation of State authority and administrative capacity to implement and enforce the underlying program."

State Provisions: The legal authority for the NJDEP to develop and enforce the OMET rule is in New Jersey's 1995 amendments to New Jersey's Air Pollution Control Act signed by the Governor on August 2, 1995 and codified at N.J.S.A. 26:2C-9.8, ***included in SIP submittal docket file.***

In order to ensure that the NJDEP has the administrative capacity to implement the OMET program, the NJDEP has designed the program to rely on private resources as well as NJDEP resources. The 1995 amendments to the New Jersey Air Pollution Control Act amended N.J.S.A. 26:2C-9.8f to state that "the department shall consider the role of a third party in the banking, verification, validation of use, enforcement, and program audits associated with emission reduction credits, and, to the maximum extent possible, create and preserve opportunities for private sector participation in any emissions trading program established by the department." Credit generation, trading, and use are private actions that do not require prior governmental approval. Credit verification will be carried out by private verifiers who are New Jersey licensed Professional Engineers or Certified Public Accountants. Also, the Department has designated a private Registry operator.

NJDEP has retained for itself only those functions which it alone can perform (rulemaking and enforcement) and the NJDEP has the resources to carry out these functions.

Approvability: EPA staff recommendation: NJDEP's OMET Program meets this requirement. **T**

TABLE 22.

EPA Requirement: 40 CFR 51.493(i) Enforcement mechanisms -- "The program shall contain a compliance instrument(s) for all program requirements, which is legally binding and State and federally enforceable. This program element shall also include a State enforcement program which defines violations, and specifies auditing and inspections plans and provisions for enforcement actions. The program shall contain effective penalties for noncompliance which preserve the level of deterrence in traditional programs. For all such programs, the manner of collection of penalties must be specified. (1) Emission limit violations. (i) Programs imposing limits on mass emissions or emission rates that provide for extended averaging times and/or compliance on a multisource basis shall include procedures for determining the number of violations, the number of days of violation, and sources in violation, for statutory maximum penalty purposes, when the limits are exceeded. The State shall demonstrate that such procedures shall not lessen the incentive for source compliance as compared to a program applied on a source-by-source, daily basis. (ii) Programs shall require plans for remedying noncompliance at any facility that exceeds a multisource emissions limit for a given averaging period. These plans shall be enforceable both federally and by the State. (2) Violations of MRR requirements. The MRR requirements shall apply on a daily basis, as appropriate, and violations thereof shall be subject to State enforcement sanctions and to the Federal penalty of up to $25,000 for each day a violation occurs or continues. In addition, where the requisite scienter conditions are met, violations of such requirements shall be subject to the Act's criminal penalty sanctions of section 113(c)(2), which provides for fines and imprisonment of up to 2 years."

State Provisions: State and Federal Enforceability The basis for the OMET Program is the state rule promulgated at N.J.A.C. 7:27-30 and related amendments of other rules at N.J.A.C. 7:27-16, 18, 19, 22 and N.J.A.C. 7:27A-3. The rule and amendments are legally binding and State enforceable. By inclusion of these rules and amendments in the New Jersey SIP for ozone, they will become federally enforceable. Specific penalties for violations are set forth in the penalty rules at N.J.A.C. 7:27A-3.10(m)30, ***included in the SIP submittal docket file***

Division of Responsibility N.J.A.C. 7:27-30.21 divides compliance responsibilities among the generator, verifier and user. In general, the generator, verifier and user is responsible for actions within his/her control, and a generator, verifier or user is in violation of N.J.A.C. 7:27-30 if they do not fulfill their respective responsibilities.

1. The generator is responsible for ensuring that it has created DER credits in accordance with N.J.A.C. 7:27-30 and that the DER credits are real, surplus, and properly quantified (N.J.A.C. 7:27-30.21).
2. The verifier is responsible for making the Notice of DER Credit Verification true, accurate and complete (N.J.A.C. 7:27-30.21) and using diligent inquiry to check that the generated DER credits are real, surplus, and properly quantified (N.J.A.C. 7:27-30.10).
3. The user is responsible for ensuring that its use of DER credits complies with N.J.A.C. 7:27-30 (including directionality requirements at N.J.A.C. 7:27-30.17 and the use prohibitions at N.J.A.C. 7:27-30.13(d). A user is also responsible for ensuring, in accordance with N.J.A.C. 7:27-30.8(a), that a DER credit is not used unless the Registry shows that the user holds the DER credit, that the DER credit is verified, that the DER credit has not been used

previously or retired, and that neither the NJDEP nor the EPA has found the DER credit to be invalid. By meeting Subchapter 30.8(a) and 30.11(k), the user has responsibilities in the event of invalid DER credits.

In any enforcement action, the generator, verifier and user bear the burden of proof on each of their respective responsibilities (N.J.A.C. 7:27-30.21). The verification step does not replace the liability of the generator or the user under the rule. Pursuant to N.J.A.C. 7:27-30.10(e), NJDEP and EPA have the authority to invalidate any DER credit; and pursuant to 40 CFR 51.493(f), NJDEP has the responsibility to see that the OMET Program is audited.

Verification A verifier must be a New Jersey-licensed professional engineer or a New Jersey-certified public accountant according to N.J.A.C. 7:27-30.10(a), and must be independent of the generator (N.J.A.C. 7:27-30.10(b)), but need not be independent of the user. In verifying a batch of DER credits, the verifier must make a diligent inquiry that goes beyond simply relying on the generator's representations (N.J.A.C. 7:27-30.10(c)). For example, if documentation supplied by the generator appears to be incomplete or self-contradictory, the verifier would need to investigate further even though the generator would have certified that the documentation was true, accurate and complete. The verifier must determine the following (N.J.A.C. 7:27-30.10(c)):

(1) The DER credit was not based on an emission reduction which the rule prohibits from being the basis for generating a DER credit;
(2) The generator used an emission quantification protocol that applies to the emission reductions generated and satisfies the requirements of N.J.A.C. 7:27-30.20;
(3) The Notice and Certification of DER Credit Generation, and all supporting documentation, contains all of the information required under Subchapter 30 and the applicable emission quantification protocol;
(4) The Notice and Certification of DER Credit Generation, and all supporting documentation, does not appear on its face to omit any information necessary to make it true, accurate and complete;
(5) The supporting documentation establishes that all calculations were performed as required under Subchapter 30 and the emission quantification protocol; and
(6) The supporting documentation establishes that DERs are based on emission reductions which are real and surplus, and satisfy all applicable requirements of Subchapter 30 for the generation of DER credits.

After verifying a batch of DER credits, the verifier notifies the holder of the DER credits (the person in whose account the Registry shows a DER credit is credited) and the Registry (N.J.A.C. 7:27-30.10(d)). The Registry therefore will show whether the DER credits are verified, making the information as to whether a credit is verified readily available.

State Provisions: (continued)

Certification The OMET rule at N.J.A.C. 7:27-30.16(d) requires persons who file Notices of Generation and Notices of Use, and N.J.A.C. 7:27-30.10(d) requires persons who file Notices of Verification, to complete a two-part certification as follows:

(1) The first-part certification must be signed by the individual with direct knowledge of and responsibility for the information contained in the certified document. The certification states “I certify under penalty of law that I believe the information provided in this document is true, accurate and complete. I am aware that there are significant civil and criminal penalties, including the possibility of fine or imprisonment or both, for submitting false, inaccurate or incomplete information.”
(2) The second-part certification must be signed by a “responsible official” and states “I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attached documents and, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant civil and criminal penalties, including the possibility of fine or imprisonment or both, for submitting false, inaccurate or incomplete information.”

N.J.A.C. 7:27-30.16(d) requires persons submitting Notices of Intent to Use DER Credits to complete a one-part certification as follows: “I certify under penalty of law that I believe the information provided in this Notice of Intent to Use DER Credits is true, accurate and complete. For those portions of the information in this Notice that are based on estimates, those estimates are the result of good faith application of sound professional judgement, using techniques, factors, or calculations approved by the NJDEP or EPA or generally accepted in the trade. I am aware that there are significant civil and criminal penalties, including fines or imprisonment or both, for submitting false, inaccurate or incomplete information.”

Penalties Section The NJDEP OMET rule at N.J.A.C. 7:27-30.22 establishes that a person who fails to comply with any

provision of Subchapter 30 shall be subject to civil administrative penalties in accordance with N.J.A.C. 7:27A-3 *(see docket file for a listing of civil administrative penalties)* and applicable criminal penalties including, but not limited to, those set forth at N.J.S.A. 2C:28 *(entitled "Perjury and Other Falsification in Official Matters", see docket file)* and N.J.S.A. 26:2C-19(f)1 and 2 *(see docket file)*. Furthermore, N.J.A.C. 7:27-30.22 establishes that if there is more than one owner or operator of an emissions source, all owners and operators are jointly and severally liable for such civil administrative penalties.

The OMET rule additionally advises users of credits of penalties as follows:

1. N.J.A.C. 7:27-30.11(k) states that a user of DER credits may be subject to penalties for a violation of the emission limit for which DER credits were to be used for compliance, if the user 1) purports to use DER credits which do not satisfy the requirements of N.J.A.C. 7:27-30.8(a), or for purposes prohibited under N.J.A.C. 7:27-30.11(b) or (c); 2) fails to submit the Notice of Intent to Use DER Credits before the use period was to begin, or fails to submit an amendment to the notice before the amended use was to begin; 3) fails to hold the full quantity of DER credits required for compliance by the date on which the Notice and Certification of DER Credit Use is due under N.J.A.C. 7:27-30.15; or 4) fails to replace invalid DER credits as required under N.J.A.C. 7:27-30.11(h);
2. N.J.A.C. 7:27-30.13(c)6 states that when using DER credits for emission offsets, if the user's DER credits used in each year that are verified before April 30 of the following year are insufficient for compliance with N.J.A.C. 7:27-18, a violation of the user source's operating permit or permit and certificate (as applicable) shall have occurred;
3. N.J.A.C. 7:27-30.17(f) states that a user who purports to use DER credits which do not satisfy the applicable geographic scope of trading requirements at N.J.A.C. 7:27-30.17 may be subject to penalties for violation of the emission limit for which DERs credits were to be used for compliance.

Audits NJDEP will ensure that any audit meets applicable requirements in EPA guidance. NJDEP recognizes its responsibility to ensure that NJDEP's OMET Program, as implemented, is consistent with the goals of rate of progress and of attainment in New Jersey, with respect to the NAAQS for ozone and does not result in continued non-attainment in New Jersey and downwind areas.

State Provisions: (continued)

Inspection plans A permitted facility whose permit includes compliance through the OMET Program, shall be inspected by the NJDEP's Enforcement Program for compliance with N.J.A.C. 7:27-30 at the time the facility is inspected for permit compliance. An unpermitted facility, or a permitted facility whose permit does not include compliance through the OMET Program, and which uses the OMET Program as part of that facility's compliance mechanism, shall be inspected by the NJDEP's Enforcement Program for compliance with N.J.A.C. 7:27-30 at the time that facility is normally inspected.

Approvability:

The State's provisions clearly outline how the OMET Program satisfies the EPA's requirements in the EIP guidance, with the exception of monetary penalties. **X**

New Jersey's OMET Program establishes at Subchapter 30.22 that any person who fails to comply with any provision of the OMET Program is subject to both civil administrative penalties and applicable criminal penalties. However, there are two provisions in Subchapter 30 which provide for the temporary relief from monetary penalties.

Subchapter 30.11(f) requires a user source to hold the full quantity of discrete credits needed for compliance before using them, and must continue to hold them until the Notice of Use is due. But this provision also allows the source to purchase additional credits it may need for compliance, provided this additional amount is multiplied by three. Subchapter 30.11(h) allows a 60-day period for sources to substitute good credits when New Jersey or EPA determines the credits are invalid for any reason. While these two provisions require the source to make up for the credits used, they provide an exception from the principle that a user source must be potentially subject to monetary penalties at any time when the user does not hold sufficient valid credits prior to the use of the credits.

New Jersey must revise Subchapter 30 to include the potential for monetary penalties at any time when the user does not hold sufficient valid credits. Section 113 of the Act requires that all violations of the Act be potentially subject to monetary penalties equivalent to $10,000 per violation per day under State law and $27,500 per violation per day under Federal rules. Every requirement under a trading program is a requirement of the Act. Therefore, any violation of the trading provisions must be potentially subject to monetary penalties from the very first day of the violation.

A source committing a violation must be potentially subject to a monetary penalty. Whether the regulatory agency actually imposes a monetary penalty depends on enforcement discretion which covers considerations such as:

- The amount of money the source saved by committing the violation
- The amount of environmental damage caused by the violation
- Evidence of knowledge that the act was a violation
- Evidence of intentional fraud.

EPA recognizes New Jersey includes the independent verifier requirement to provide confirmation of the correct generation and quantification of discrete credits to prevent the generation and use of invalid credits. However, while the verification step may minimize the likelihood of the use of invalid credits, there is still the possibility of sources using invalid credits. Under Subchapters 30.11(f) and (h) it is possible for a source to buy credits that may not be valid, to claim to have bought valid credits that may be invalid credits, or to buy fewer credits than the amount needed for compliance. When New Jersey determines the source is holding invalid credits or when the source discovers it needs additional credits for compliance after the use of the credits, the source only has to buy the additional valid credits which they should have bought in the first place (only now the source can buy the credits at a later date).

Trading programs should encourage sources to ensure that they hold sufficient credits in advance of use and that they use valid credits. The potential for federal and state penalties immediately upon the discovery of a violation is an incentive which the regulatory agency cannot achieve by merely requiring the purchase of replacement credits. **Therefore, New Jersey must revise Subchapter 30, to address sections 30.11(f) and (h), and include the potential for monetary penalties at any time when the user does not hold sufficient valid credits.**

New Jersey should also revise Subchapter 30 (or Subchapter 3 at N.J.A.C. 7:27A) to clarify what constitutes a violation and provide the potential to assess daily penalties. In some cases, a user's failure to comply with Subchapter 30 may prevent the use of discrete credits for compliance with an emission limit. In such cases, if the user exceeds the emission limit it would be in violation of existing provisions and the existing rules contain penalties for such violations. Also, the general sections at Subchapter 3.5 specify that each violation constitutes a separate and distinct offense, and each day during which a violation continues will constitute an additional, separate, and distinct offense. However, New Jersey should clarify that during a particular compliance period, if a source does not hold sufficient valid credits at any time, the source is subject to a violation. New Jersey should also clarify that if the source is using credits to comply with a requirement over an extended compliance period, such as a 30-day rolling average, then the source could be subject to a violation of the entire compliance period.

Section III.B.2. Open Market Trading Guidance

EPA published a proposed policy on open market trading programs and a proposed model open market trading rule. Each section of EPA's model rule is presented in a separate table. Each table discusses the EPA's model rule requirements, the provisions of New Jersey's OMET Program intended to meet the model rule requirement, and EPA staff's recommendations on approvability of the State's provisions. A 'checkmark' (**T**) means NJDEP's OMET program meets EPA's requirement. An 'x-mark' (**X**) means NJDEP's OMET program does not meet EPA's requirement.

TABLE 23.

EPA Requirement: I. Purpose -- "To establish a process whereby sources may generate and use discrete emission reductions for compliance with VOC and NO_x requirements in the Act while complying with all other applicable requirements of the Act."
State Provisions: NJDEP's OMET Program clearly states a similar purpose and scope in Subchapter 30.1
Approvability: EPA staff recommendation: NJDEP's OMET Program meets this requirement. **T**

TABLE 24.

EPA Requirement: II. Definitions -- Defines several terms related to open market trading programs.

State Provisions: NJDEP's OMET Program contains definitions in Subchapter 30.2. More general terms are defined elsewhere in the New Jersey Administrative Code. Where appropriate the Subchapter 30.2 definitions are consistent with the definitions in proposed model rule.

Approvability: NJDEP's definition of "curtailment" differs from the definition in EPA's proposed model rule. Subchapter 30.2 defines curtailment as:

> "a temporary or partial reduction in an emission source's activity level (e.g., hours of operation or process rate). For the purposes of this rule, this term does not include either of the following reductions: (1) A reduction in mobile source activity levels that results from an activity reduction plan approved by the EPA or by a State agency (such as an employee commute option plan approved by the State Department of Transportation under N.J.A.C. 16:50); or (2) A reduction in an electric generator's activity level that results from implementing electrical energy efficiency measures in residential, commercial, industrial, institutional or government facilities."

With respect to item (1), the intent behind this provision and section 30.4(a)(1) is to *allow* for the reduction in mobile source activity levels to serve as the basis for generating credit, if it occurred under an activity reduction plan approved by EPA or in the case of an employee commute option plan, a State Agency. Approval of an activity reduction plan by a State Agency is pursuant to the particular mobile source program, not this provision of the OMET Program. New Jersey's Department of Transportation approves voluntary mobile source reduction programs which are not creditable towards or included in the SIP, and therefore do not undergo EPA review or approval. While section 30.4(a)(1) would allow these types of reduction strategies to be eligible for generating discrete credit, the credit generation must still satisfy the emission quantification protocol requirements in section 30.20, which for mobile sources must be "...an emission quantification protocol which complies with all applicable guidance issued by the EPA concerning mobile source protocols." **In the NPR, Region 2 will ask New Jersey to clarify this confusion when the State revises Subchapter 30.**

With respect to item (2), NJDEP excludes such "demand-side management" (DSM) measures because they are consistent with the goals of the open market trading system and should be encouraged.

Though EPA does not provide an exclusion for DSM measures in the definition of curtailment in the proposed model rule, it recognized there are some situations in which DER credits generated from activities that appear to be shutdowns and curtailments might be consistent with an open market system, as stated in the preamble to EPA's proposed open market policy (60 FR 39680). One example is the concept of allowing DER credits to be generated from shutdowns and curtailments when such reductions can be captured within a "closed loop" of existing and new sources. Facilities that replace small boilers with a central energy source and thus create fewer emissions might create a net environmental benefit through small boiler shutdowns. This differs from the more common shutdown case, where a facility closes and the production load could shift to another unrelated source. In the proposal, EPA requested comments on language that would allow for acceptable, environmentally benign or beneficial exceptions to the common shutdown/curtailment circumstances. One suggestion was for EPA to include an exclusion similar to the exclusion for mobile sources that are the subject of an EPA-approved emissions quantification protocol.

The concerns with allowing curtailments to generate DER credits is that maintenance and attainment plans often already rely upon emission reductions caused by production decreases at some sources to help counteract increased emissions caused by higher levels of production at sources subject to emission rate limits, where emission increases are allowed to occur when net production increases (proposal on Michigan's trading program, 62 FR 48974). NJDEP addresses this concern by requiring in Subchapter 30.4(b) that "DER credits shall be based only on emission reductions that are real, surplus, and quantified in accordance with Subchapter 30.5 and 30.20." In addition, NJDEP clarified in its response-to-comments that the projected inventories that have been prepared by NJDEP for use in the rate or progress plans do not include emission reductions from any DSM strategies, mandated or otherwise. So any emission reductions from DSM would be surplus. Therefore, EPA is willing to allow for the exclusion of DSM measures in the definition of curtailment, since any other issues of surplus emission reductions will be addressed in the emission quantification protocol. This position is similar to the above exclusion for certain mobile source-use level reductions, which would not be considered curtailments.

Another definition which should be highlighted is found in Subchapter 30.3(e). This provision specifies a DER credit is one

twentieth of a ton of emission reductions. This means one ton of emission reductions is equal to 20 DER credits.

EPA staff recommendation: NJDEP's OMET Program meets this requirement. **T**

TABLE 25.

EPA Requirement: III. General Rules for Generation and Use -- "(A) General Rule....Any source may generate a DER credit by reducing emissions....DER credit generators must ensure DER credits are real, properly quantified and surplus."

State Provisions: Subchapter 30.3(b), 30.4(a) and 30.4(b) are consistent with the provisions of EPA's model rule.

Approvability: EPA staff recommendation: NJDEP's OMET Program meets this requirement. However, New Jersey should specify that while mobile source activity level reductions may be eligible to generate discrete credit, the generation strategy must still comply with any applicable EPA guidance concerning mobile source emission quantification protocols. **T**

TABLE 26

EPA Requirement: III. General Rules for Generation and Use -- "(B) Governmental Approvals....No prior Federal, State or local governmental approval is necessary for the use of DER credits, except for DER credits used for New Source Review purposes."

State Provisions: Subchapter 30.3(b) is consistent with the provisions of EPA's proposed model rule.

Approvability: EPA staff recommendation: NJDEP's OMET Program meets this requirement. **T**

TABLE 27.

EPA Requirement: III. General Rules for Generation and Use -- "(C) Market Participation....Any person may at any time, transfer, buy, sell, trade, or otherwise convey DER credits to another person...."

State Provisions: Subchapter 30.3(b) is consistent with the provisions of EPA's proposed model rule.

Approvability: EPA staff recommendation: NJDEP's OMET Program meets this requirement. **T**

TABLE 28.

EPA Requirement: III. General Rules for Generation and Use -- "(D) Time of Use....DER credits may be used anytime after the State receives the Notice and Certification of generation...."

State Provisions: Subchapter 30.11(a) states a user shall use only DER credits which satisfy the requirements of Subchapter 30.8(a). Subchapter 30.8(a) states a user source located in New Jersey may not use a DER credit for compliance unless the Registry shows that the user holds the DER credit, that the DER credit is verified, that the DER credit has not been used previously or retired, and that neither NJDEP nor EPA has found the DER credit to be invalid.

Approvability: The provisions in Subchapters 30.11(a) and 30.8(a) are consistent with the provisions of EPA's proposed model rule, because they can only be met by the submittal of the Notice and Certification of Generation. **T**

TABLE 29.

EPA Requirement: III. General Rules for Generation and Use -- "(E) Limited Authorization to Emit....A DER credit....is a limited authorization to emit NO_x and/or VOC....A DER credit does not constitute a property right. Nothing in this rule shall be construed to limit the authority of the State or the United States to terminate or limit such authorization."

State Provisions: Subchapter 30.3(a) is consistent with the provisions of EPA's proposed model rule.

Approvability: EPA staff recommendation: NJDEP's OMET Program meets this requirement. **T**

TABLE 30.

EPA Requirement: IV. DER Generation - (A) Computation of DER credits -- "(1) General Rule. The amount of DER credits shall be the difference between-- (a) The amount of VOC or NO_x emissions that would have been emitted during the generation period based on actual activity levels during that period and the lower of (i) the lowest applicable allowable emissions rate, or (ii) the actual emissions rate based on normal source operation, and (b) The amount of actual emissions during the generation period based on actual activity levels during that period.....(3) Sources Subject to Emissions Caps....(a) the term ``allowable emissions rate" includes a source's allowable amount of total emissions for the generation period, as may be specified in that source's Federally enforceable operating permit, in the SIP, or included with respect to that source in the attainment demonstration or maintenance plan (or the emissions inventory that forms the basis for such demonstration or plan). (b)....if the generation period differs from the period of the emissions cap, the allowable emissions rate for the generation period shall be adjusted to reflect the proportion of the generation period to the period of the emissions cap. (c) Amounts .....must be adjusted to the extent necessary to exclude emission reductions resulting from shutdowns or curtailments.... (4) Sources Subject to Multiple Emissions Limitations. If a source is subject to multiple emissions limitations, the amount of DER's shall be determined by reference to the emissions limitation that results in the least amount of DER credits..... (5) Protocols. The amount of DER credits must be calculated using quantification protocols that meet the requirements of section VIII...."

State Provisions: Subchapter 30.5 contains provisions for computing the amount of DER credits generated. The quantity of DER credits generated is the difference between baseline emissions and actual emissions according to an emission quantification protocol, and the formula:

DER credits = (Baseline Emission Rate - Actual Emission Rate) x Economic Output.

The baseline emission rate must be the lowest of (i) the lowest allowable emission rate minus a design margin; (ii) the actual emissions during the baseline period; or, (iii) the upstream, pre-control emissions during the generation period. The actual emission rate is based on the emissions actually measured during the generation period. If the generation strategy results in increased emissions at other sources, the quantity of DER credits generated must be reduced by the amount of these increases.

Approvability: Subchapter 30.5(c) appropriately defines the baseline period to include two intervals in the five calendar years before the generation period. This requirement limits how far back a source can go to show which emission data is representative of normal source operation. EPA would reject the use of any baseline calculation based on data from any date before November 15, 1990. Since NJDEP's OMET Program was adopted on August 2, 1996, none of the baseline periods in the Program will include data from before November 15, 1990. Also, those credit generation strategies between 1992 and 1996, which occurred prior to August 2, 1996, and submitted to NJDEP by October 31, 1996, were submitted to EPA. ***None of these earlier credit generations included baseline periods based on data from before November 15, 1990.*** Also, the definition for baseline period is different from the time periods as presented in the definitions for actual emission rate in the proposed open market rule and in the new source review rules. However, EPA guidance also allows for the use of a different time period if it is more representative of normal source operation. EPA has customarily accepted "two years out of the previous five years" to define the baseline period. This is the time period used in Subchapter 30.5(c), and is therefore acceptable.

EPA notes the definitions for "economic output" and "activity" applied in sections 7:27-30.5(b) and 7:27-30.12(b) are clear with the understanding that the units for activity will correspond to the applicable emission rate. For instance, the definition for activity relates directly to an emission source's emission rate during a selected time period. Therefore, if a source's emission rate is in terms of emissions per Btu of fuel consumed, the source's activity is in terms of the number of Btu's of fuel consumed during the selected time period. The definition for economic output relates to an emission source's goods or services produced during a specified period of time. Therefore, a source's economic output is in terms of Btu's of thermal energy, or kilowatt hours of electricity, or amount of coating application, or vehicle miles traveled. **In the NPR, Region 2 will ask New Jersey to clarify this confusion when the State revises Subchapter 30.**

Also, section 30.5 (b)(2)(ii) uses a baseline activity level for determining an emission rate. Generally, to determine the amount of DER credits generated, the "baseline emission rate" is in terms of emissions per unit of economic output. If the actual emission rate during the baseline period is the lowest emission rate, Subchapter 30.5(b)(2)(iii) requires the source use the number of units of economic output produced during the baseline period to determine the generator source's total emissions. **New Jersey should clarify the formula for computing DER credit generation to ensure emission reductions are real reductions.**

EPA staff recommendation: NJDEP's OMET Program meets this requirement. **T**

TABLE 31.

EPA Requirement: IV. DER Generation - (B) Limitations on Generation -- "A DER credit shall not be formed by emissions reductions of activities or source categories identified in this subsection:
(1) Shutdowns; (2) Curtailments; (3) Modification or discontinuation of any activity that is otherwise in violation of any Federal, State or local law; (4) Emissions reductions required to comply with any provision under the Act for control of tropospheric ozone and Title IV of the Act....; (5) Emission reductions of hazardous air pollutants, as defined in section 112 of the Act, from application of a standard promulgated under section 112 of the Act; (6) Reductions credited or used under any other emissions trading program, including any mobile source averaging, banking, and trading program; (7) Emission reductions occurring at a source which received an alternative emission limitation to meet a State RACT requirement,
except to the extent that the emissions are reduced below the level that would have been required had the alternative emission limitation not been issued; (8) Emission reductions generated prior to the start of the ozone season in 1995; (9) Any source subject to a RACT limit pursuant to the Act, but with respect to which the State has not determined the RACT limit, until the State determines RACT through a permit or SIP approval action."

State Provisions: Subchapter 30.6 clearly includes limitations on DER credit generation consistent with the provisions of EPA's proposed model rule, with the one exception of "emission reductions generated prior to the start of the ozone season in 1995," discussed below.

Approvability: NJDEP appropriately does not allow for the generation of DER credits from emission reductions resulting from shutdown or curtailments. It should be noted the NJDEP OMET Program excludes DSM measures from the definition of curtailment as discussed in ***Table 24***. With respect to DSM and energy efficiency, ***Table 24*** details why EPA is willing to allow these measures in NJDEP's OMET Program. In addition, EPA believes the showings discussed in ***Table 3*** demonstrate that this provision of the OMET Program will not interfere with other SIP requirements. **Regardless, New Jersey should specifically evaluate this issue as part of the periodic program audit.**

At Subchapter 30.6(b), NJDEP does not allow for the generation of DER credits from emission reductions which occurred prior to May 1, 1992. An emission reduction which occurred between May 1, 1992 and August 2, 1996 may be the basis for generating a DER credit if either (1) NJDEP informed the generator in writing by October 31, 1996 that the emission reduction is real, surplus, and properly quantified, or (2) the generator submits a Notice and Certification of DER Credit Generation to NJDEP and the Registry by October 31, 1996. The only generation strategies pursuant to (1) above are the 7,139 tons of NO_x emission reductions generated by Public Service Electric and Gas in 1992 and 1993. These emission reductions are the subject of source-specific SIP revisions submitted by New Jersey to EPA, independent of this TSD. ***Section III.A.4.*** of this TSD discusses all of the DER credit generation strategies submitted to NJDEP pursuant to (2) above. All of these generation strategies have been submitted to EPA as supplemental information in support of the OMET SIP revision.

In the preamble to EPA's proposed open market policy (60 FR 39679), EPA acknowledged that some sources in the Northeast have participated in the EPA-funded NESCAUM/MARAMA Demonstration Project from 1992 through 1996 and have made discrete emission reductions before 1995. EPA stated it would accept these reductions through the source-specific SIP revision process. However, EPA has provided additional guidance on early credit generation strategies since the time of the proposed open market policy. Specifically, EPA's proposed approval of Michigan's Trading Program of September 18, 1997 stated EPA was willing to accept older reductions if the State provided: (1) An accounting of the number of pre-enactment credits generated and the remaining life of these credits; and, (2) An analysis which demonstrates to EPA's satisfaction that the potential use of these credits is unlikely to have a detrimental effect on attainment or maintenance of the NAAQS or on any other requirement of the Act. EPA Region 2 provided similar guidance to NJDEP in correspondence prior to the OMET SIP submittal.

NJDEP satisfied both of these conditions in their OMET SIP submittal. Therefore EPA accepts NJDEP's provision for allowing emission reductions between May 1, 1992 and August 2, 1996 primarily because these emission reductions (1) are limited to scope, (2) were submitted with the SIP revision, and, (3) as explained in ***Table 3***, NJDEP demonstrated these early reductions have not caused a large-scale increase or "spiking" of emissions due to the use of credits for compliance. In addition, EPA has reviewed all of the early credit generation strategies and has communicated its conclusions from the review to NJDEP and the applicable sources, as discussed in ***Section III.B.4.*** Also, EPA is recognizing these pre-1995

discrete emission reductions for equity reasons, since NJDEP's OMET Program appropriately allows any source to submit pre-1995 reductions, not just sources which participated in the NESCAUM/MARAMA Demonstration Project.

In addition to the limitations found in EPA's proposed model rule, NJDEP includes three other limitations on generation:

(1) An emission reduction accompanied by an increase in emissions of any HAP which exceeds the de minimis level designated for that HAP by EPA in proposed rules at 59 FR 15504, April 1, 1994.

(2) An emission reduction accompanied by a violation of a Federal or State law, regulation, permit or order.

(3) Emission reductions from a generator source not reflected in the State's emissions inventory submitted to the EPA for inclusion in the SIP.

EPA staff recommendation: NJDEP's OMET Program meets this requirement. **T**

TABLE 32.

EPA Requirement: IV. DER Generation - (C) Notice and Certification of Generation -- "(1) General Rule.....a generator source shall provide a Notice and Certification of Generation to the State: (a) No later than 90 days after the DER credits generation activity was completed, (b) One year after the first day of the generation period (and at least annually thereafter), or (c) Prior to the first day of the use period, whichever is sooner. The Notice and Certification of Generation shall be publicly available...."

State Provisions: Subchapter 30.7(a) requires the generator to submit a Notice and Certification of DER Credit Generation within 90 days after the last day of the generation period, for each batch of DER credits generated. Subchapter 30.4(c) requires the generation period for any batch of DER credits to not exceed one year, but additional batches of DER credits may be generated over consecutive generation periods. Subchapter 30.19 requires all information to be publicly available.

Approvability: NJDEP OMET's Program requires the Notice and Certification of DER Credit Generation to be submitted within the shortest time under EPA's proposed model rule. However, it does allow for some flexibility should the Notice be submitted late. If the Notice is late, the quantity of DER credits generated is reduced by ten percent. The amount is reduced an additional ten percent for each additional 30 days the Notice is late. This provision allows for some portion of credit generation to be recognized if a Notice is late, but also gives incentive to a source for submitting notices on time. This flexibility for submitting late Notices should not interfere with the need for appropriate reporting and recordkeeping for compliance purposes. The provisions for submitting late notices is limited in any relief from the Notice submittal deadline and does not bring a source into compliance with its underlying requirement, leaving them subject to enforcement.
EPA staff recommendation: NJDEP's OMET Program meets this requirement. **T**

TABLE 33.

EPA Requirement: IV. DER Generation - (C) Notice and Certification of Generation -- "(2) Required Information. The Notice and Certification of Generation shall include the following information.....(a) For stationary source reductions, identifying information, including--(i) The name and address of the generator, and (ii) The name of the owner and/or operator of the generator source. (b) For mobile sources related reductions, identifying information as required in the applicable USEPA approved protocol or described in USEPA guidance on protocols. (c) The generation period and the unique serial numbers assigned by the State to each ton of DER credits. (d) A brief description of the generation activity. (e) The amount of DER credits generated during the ozone season and the amount of DER's generated during other parts of the year. (f) The protocols that were used to calculate and document the DER credits. (g) Information on all the generator source's applicable allowable emission rates. (h) A statement that the reductions were calculated in accordance with the section on DER credit computation. (i) A statement that the DER credits were not generated in whole or in part from actions prohibited in the section on generation limitations. (j) For each source subject to reporting toxic chemical releases for the Community Right-to-Know provisions under 40 CFR part 372, the estimated amount of hazardous air pollutants.....emitted to the air as the result of the generation of the DER credit....."

State Provisions: Subchapter 30.7(b), 30.16 and 30.20 require the same information and statements specified in the proposed model rule.

Approvability: EPA staff recommendation: NJDEP's OMET Program meets this requirement. However, EPA's proposed open market policy also requires the Notices to include information on any forgone emission reductions in hazardous air pollutants due to the generation or the use of discrete credit, instead of non-discrete credit compliance with otherwise applicable requirements. New Jersey must revise the provisions on Notice requirements to include information on forgone emission reductions. **X**

TABLE 34.

EPA Requirement: IV. DER Generation - (C) Notice and Certification of Generation -- "(3) Certification Under Penalty of Law. Any Notice and Certification of Generation .....shall contain certification under penalty of law by a responsible official of the generator source of truth, accuracy and completeness. This certification shall state that based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate and complete."

State Provisions: Subchapter 30.16(d)(1) requires the generator to certify each Notice and Certification of DER Credit Generation in accordance with N.J.A.C. 7:27-1.39. Subchapter 1.39 requires that any document submitted to NJDEP contain a two-part certification that all the information in the document is true, accurate and complete.

Approvability: EPA staff recommendation: NJDEP's OMET Program meets this requirement. **T**

TABLE 35.

EPA Requirement: V. DER Use -- (A) Time of Acquisition. "DER's may not be used unless they are acquired by the user source before the compliance period for which the specific DER's are to be used." (B) Sufficiency. "The user source must hold sufficient DER's to cover its compliance obligation at all times."

State Provisions: Subchapter 30.11(f) contains the same requirements as the proposed model rule. In addition, if the user fails to hold the full quantity of DER credits needed for compliance before using them, the number of DER credits needed for compliance for each day the shortfall continues is multiplied by three.

Approvability: NJDEP's OMET Program requires the user to hold the full quantity of DER credits needed for compliance before they are used. NJDEP allows for some flexibility should there be a shortfall in the full amount of DER credits held. However, Subchapter 30.11(k)(3) clearly states the user may be subject to penalties for violation of the emission limit, if the user fails to hold the full quantity of DER credits.
EPA staff recommendation: NJDEP's OMET Program meets this requirement. **T**

TABLE 36.

EPA Requirement: V. DER Use -- (C) Operating Permits. "(1) For sources subject to the requirement to obtain a permit under a Federally approved operating permit program, the permit, when issued or revised, shall authorize the use of DER's for compliance purposes. (2) The Notices of Intent to Use DER's and Notice and Certification of Use shall be stored with the user source's operating permit, if applicable."

State Provisions: Revisions made to NJDEP's operating permit program, Subchapter 22, contain the same requirements as the proposed model rule. See ***Section III.A.2.*** of this TSD.

Approvability:
The purpose of the Title V permitting program, codified in 40 CFR Part 70, is to ensure that a single document identifies all applicable requirements under the Act for sources that are "major sources" or are otherwise required to obtain subject to a federally enforceable operating permit. Part 70 contains provisions designed to streamline the process of modifying operating permits for facilities that wish to participate in an emissions trading programs like the New Jersey OMET program. See, e.g., 40 C.F.R. §§ 70.6(a)(8), 70.7(e)(2)(B). New Jersey has revised several provisions in its operating permits regulation, N.J.A.C. Title 7, Chapter 27, Subchapter 22, in an effort to establish appropriate procedures for facilities to make changes to their operating permits so that they can participate in the OMET program. These revisions to the New Jersey operating permits regulation will be reviewed separately to determine whether they are consistent with the federal operating permits regulations

and the Clean Air Act.

A key element in the design and implementation of trading programs, including open market trading programs, is methods for quantifying amounts of emissions. Precisely determining these amounts would be important to determine the amount of emissions by which a source may be exceeding its SIP or permit limits, and therefore the amount of emissions reductions the source would need to acquire in an emissions trade in order to meet those limits; as well as the amount of emissions a source may generate to sell. These methods are often referred to as emissions quantification protocols, or, simply, protocols.

The 1992 preamble to the Part 70 rulemaking (57 FR 32250, July 21, 1992) (1992 Permits Rule Preamble) discusses emission quantification methods in the context of reviewing emissions trading within a permitted facility to meet its SIP limits, where the approved SIP authorizes such trading or emission averaging.

The provisions of 40 CFR § 70.4(b)(12)(ii) would allow a source to trade emissions within the permitted facility to meet its SIP limits, where the permit does not already provide for such emissions trading but the SIP does. This method would allow a source which had not anticipated needing to trade emissions within the facility to take advantage of emissions trading provisions in the SIP after a 7-day notice*,* without having to modify its permit to include new compliance provisions to enforce for the emissions trade. For trades to occur under § 70.4(b)(12)(ii), the Part 70 preamble explains that:

> "Any such SIP would have to include compliance requirements and procedures for such trades . . . these procedures must assure that any trade is quantifiable, accountable, enforceable and based on replicable procedures for ensuring the emission reductions that the trading program was intended to provide, including necessary test methods, monitoring, recordkeeping, and reporting." See 57 FR 32250, 32268 (July 21, 1992).

Similarly, the 1992 Permits Rule Preamble allowed States to use the minor permit modification process to make changes to operating permits to allow facilities to participate in emissions trading programs, if the underlying SIP or EPA rule explicitly provided that minor permit modification procedures could be used. 57 FR at 32287. The 1992 Permits Rule Preamble also stated that trading programs approved in SIPs and EPA regulations would have to contain compliance requirements and protocols to assure that market-based programs were quantifiable, accountable, enforceable and based on replicable procedures for determining emission reductions expected from the program. Id.

In 1995, EPA proposed guidance for state open market trading programs submitted for EPA approval as part of the SIP. The 1995 proposal provides guidance on the emissions quantification criteria identified in the Part 70 preamble in the context of designing SIP-based programs to allow trading among facilities. Specifically, the 1995 guidance allows for a state's SIP-approved open market trading rule to contain only the criteria and process for sources to develop protocols. This guidance recommends that the protocols, which contain the specifics of quantifiable and replicable procedures, need not be included in the SIP, but instead may be included with the permit at the time of the emission trade.

By notice dated September 15, 1999, EPA published notice of, and opportunity for comment on, the Draft Economic Incentive Program Guidance. 64 FR 50086 (Draft EIP Guidance). Under this draft guidance proposal, States with EIPs would submit protocols as SIP revisions, although in certain limited circumstances trading could proceed on an interim basis if specified procedures were followed before EPA took action on those SIP submittals. Draft EIP Guidance, section 6.2(c).

The 1992 Permits Rule Preamble stated that Title V required emissions quantification protocols to be included in the SIP in order for intra-facility trading to be available through the seven-day notice procedure. It could be interpreted that similar requirements would apply for inter-facility trading. The 1992 Permits Rule Preamble also expressed EPA's view that emissions quantification protocols should be included in SIPs in order for the minor permit modification process to be used to allow facilities to participate in inter-facility trading programs, if the underlying SIP or EPA rule explicitly provided that minor permit modification procedures could be used. Today, EPA proposes to clarify that Title V does not require that protocols be included in the SIP. Rather, the requirements of Title V would be satisfied with the inclusion of protocols in the permits themselves. EPA is not, however, proposing today to revise the provisions of the Draft EIP Guidance, which recommend that protocols be included in the SIP to meet the requirements of CAA section 110 (including section 110(a)(2)(A), mandating "enforceable emissions limitations"). In subsequent guidance or rulemaking, which could include further action on the Draft EIP Guidance, EPA intends to clarify the relationship between protocols and SIP revisions for purposes of the section 110

requirements.

In addition, EPA proposes to approve New Jersey's OMET Program on the basis that at the time New Jersey adopted and submitted it to EPA, New Jersey relied on the guidance provided in 1995. As a result, EPA proposes to approve the provisions of the OMET Program that the SIP must include criteria for protocol development but not the protocols themselves.

EPA staff recommendation: NJDEP's OMET Program meets this requirement. **T**

TABLE 37.

EPA Requirement: V. DER Use -- (D) Environmental Contribution. "At the time of use, DER users shall permanently retire ten percent of all DER's dedicated to that particular use. That is, the amount of DER's required to demonstrate compliance equals the source's calculated need divided by 0.9."

State Provisions: Subchapter 30.12(b) requires the source's calculated need to be divided by 0.9."

Approvability: EPA staff recommendation: NJDEP's OMET Program meets this requirement. **T**

TABLE 38.

EPA Requirement: V. DER Use -- (E) Compliance Calculation. "The amount of DER's needed to demonstrate compliance shall be the difference between-- (1) The actual emissions expressed in units of mass or the alternative limit under which the source will operate, and (2) The allowable emissions based on actual activity levels expressed in units of mass."

State Provisions: Subchapter 31.12(b) requires the quantity of DER credits needed for compliance to be the difference between the user source's actual emissions and its baseline emissions, divided by 0.9. This section defines baseline emissions as the lowest allowable emissions. As discussed in Section III.A.1.b., New Jersey clarified this formula in a Correction Notice.

Approvability: EPA staff recommendation: NJDEP's OMET Program meets this requirement. **T**

TABLE 39.

EPA Requirement: V. DER Use -- (F) Notice of Intent to Use DER's. "(1) General Rule. DER's may be used only if the owner or operator of the user source submits to the State a Notice of Intent to Use DER's. The Notice of Intent to Use DER's shall be submitted at least 30 days before the intended use period begins, and at least annually if the use period is greater than one year. The Notice of Intent to Use DER's shall be made publicly available...."

State Provisions: Subchapter 30.14 requires the user to submit a Notice of Intent to Use DER Credits to the Registry at least 30 days before the beginning of the use period. Subchapter 30.11(d) specifies a use period shall not exceed one year, but DER credits may be used over consecutive periods. If a Notice is late, Subchapter 30.11(e) requires the number of DER credits required for compliance, from the beginning of the use period until the full 30 days has elapsed, shall be multiplied by 1.5. The use period shall not begin until the Notice is filed with the Registry. Subchapter 30.19 requires all information to be publicly available.

Approvability: NJDEP OMET's Program requires the Notice of Intent to Use DER Credits to be submitted at least 30 days before the start of the use period. NJDEP allows for some flexibility should the Notice be submitted late. If the Notice is late, the quantity of DER credits needed for compliance is multiplied by 1.5. This provision allows for some portion of credit use to be recognized if a Notice is late, but also gives incentive to a source for submitting notices on time. This flexibility for submitting late Notices should not interfere with the need for appropriate reporting and recordkeeping for compliance purposes. In addition, Subchapter 30.11(k)(2) clearly states the user may be subject to penalties for violation of the emission limit, if the user fails to submit the Notice of Intent to Use DER Credits before the start of the use period. Therefore, the provisions for submitting late notices is limited in any relief from the Notice submittal deadline and does not bring a source into compliance with its underlying requirement, leaving them subject to enforcement.
EPA staff recommendation: NJDEP's OMET Program meets this requirement. **T**

TABLE 40.

EPA Requirement: V. DER Use -- (F) Notice of Intent to Use DER's. (2) Required Information. "The Notice of Intent to Use DER's shall include the following information.....: (a) The name and location of the user. (b) The emissions unit or application name, the permit or identification number (if applicable), and the applicable pollutant. (c) The applicable State and Federal requirements that the DER's will be used to comply with and the intended use period. (d) A copy of the Notice and Certification of Generation submitted by the generator source to the State. (e) The emission quantification protocols that will be used to document the amount of DER's needed to demonstrate compliance. (f) For each source subject to reporting toxic chemical releases for the Community Right-to-Know provisions under 40 CFR part 372, the estimated amount of hazardous air pollutants expected to be emitted to the air as the result of the use of the DER's to meet the otherwise applicable requirements. The estimated amount shall include expected emissions increases and any expected forgone emission reductions due to use of the DER's instead of non-DER compliance with otherwise applicable requirements."

State Provisions: Subchapter 30.14(b), 30.16 and 30.20 require the same information and statements specified in the proposed model rule.

Approvability: EPA staff recommendation: NJDEP's OMET Program meets this requirement. However, EPA's proposed open market policy also requires the Notices to include information on any forgone emission reductions in hazardous air pollutants due to the generation or the use of discrete credit, instead of non-discrete credit compliance with otherwise applicable requirements. New Jersey must revise the provisions on Notice requirements to include information on forgone emission reductions. **X**

TABLE 41.

EPA Requirement: V. DER Use -- (G) Notice and Certification of Use. (1) General Rule. "The owner or operator of a user source shall submit to the [State] a Notice and Certification of Use that contains the [required] information.....within 90 days after the end of the use period or one year after the beginning of the use period, whichever is sooner. The owner or operator of a user source shall provide the required information for each increment of DER's used over a time period not to exceed one year. The Notice and Certification of Use shall be made publicly available...."

State Provisions: Subchapter 30.15 requires the user to submit a Notice and Certification of DER Credit Use to the NJDEP and the Registry within 30 days after the end of the use period. Subchapter 30.11(d) specifies a use period shall not exceed one year, but DER credits may be used over consecutive periods. Subchapter 30.19 requires all information to be publicly available.

Approvability: EPA staff recommendation: NJDEP's OMET Program meets this requirement. **T**

TABLE 42.

EPA Requirement: V. DER Use -- (G) Notice and Certification of Use. (2) Required Information. "The Notice and Certification of Use shall include the following information.....: (a) The name and location of the owner or operator of the user source. (b) The date(s) on which the DER's were acquired. (c) The amount of DER's used and the associated serial numbers assigned by the [State]. (d) The use period. (e) The applicable State and Federal requirements that the DER's were used to comply with. (f) The emissions quantification protocols that were used to calculate the amount of DER's required to demonstrate compliance and documentation for the compliance calculation..... (g) A statement that due diligence was made to verify that the DER's were not previously used, not generated as a result of actions prohibited under this regulation or other provisions of law. (h) A statement that the DER's were not used in a manner prohibited under this regulation or other provisions of law. (i) A copy of the relevant Notice and Certification of Generation. (j) For each source subject to reporting toxic chemical releases for the Community Right-to-Know provisions under 40 CFR part 372, the estimated amount of hazardous air pollutants emitted to the air as the result of the use of the DER to meet otherwise applicable requirements. The estimated amount shall include emissions increases and any forgone emission reductions due to use of DER's instead of non-DER compliance with otherwise applicable requirements."

State Provisions: Subchapter 30.9(a), 30.15(b), 30.16 and 30.20 require the same information and statements specified in the proposed model rule.

Approvability: EPA staff recommendation: NJDEP's OMET Program meets this requirement. However, EPA's proposed open market policy also requires the Notices to include information on any forgone emission reductions in hazardous air

pollutants due to the generation or the use of discrete credit, instead of non-discrete credit compliance with otherwise applicable requirements. New Jersey must revise the provisions on Notice requirements to include information on forgone emission reductions. **X**

TABLE 43.

EPA Requirement: V. DER Use -- (G) Notice and Certification of Use. (3) Certification Under Penalty of Law. "Any Notice and Certification of Use submitted pursuant to this regulation shall contain certification under penalty of law by a responsible official of truth, accuracy and completeness. This certification shall state that based on information and belief formed after reasonable inquiry, the statements and information in the document and in referenced documents attached are true, accurate and complete."

State Provisions: Subchapter 30.15(b)(4) and 30.16(d)(3) requires the user to certify each Notice and Certification of DER Credit Use in accordance with N.J.A.C. 7:27-1.39. Subchapter 1.39 requires that any document submitted to NJDEP contain a two-part certification that all the information in the document is true, accurate and complete.

Approvability: EPA staff recommendation: NJDEP's OMET Program meets this requirement. **T**

TABLE 44.

EPA Requirement: V. DER Use -- (H) Use Limitations. "DER's may not be used-- (1) Before acquisition by the user of the DER's; (2) For netting or other means to avoid the applicability of NSR requirements; (3) For NSR offsets or conformity purposes unless [certain] requirements.....are met; (4) To meet Act requirements for new source performance standards (NSPS) under section 111; lowest achievable emission rate (LAER) standards under section 173(a)(2); best available control technology (BACT) standards under section 165(a)(4); hazardous air pollutant (HAP) standards under section 112; standards for solid waste combustion under section 129; requirements for a vehicle inspection and maintenance program under sections 182(b)(4) or (c)(3); requirements for an employer trip reduction program under section 182(d)(1)(B); ozone control standards set under section 183; clean fueled fleet requirements under section 246; motor vehicle emissions standards under section 202; standards for nonroad vehicles under section 213; requirements for reformulated gasoline under section 211(k); or requirements for Reid vapor pressure standards under section 211(h) and (i); (5) State motor vehicle emission standards; (6) To meet requirements for one class of tropospheric ozone precursor by using DER's generated in a different class of tropospheric ozone precursors (e.g., NO_X reductions may not be exchanged for VOC increases, or vice-versa); (7) To meet requirements during an ozone season unless the DER was generated during an ozone season; or (8) To meet requirements contained in Title IV of the Act."

State Provisions: Subchapters 30.11 and 30.13 include limitations on DER credit use consistent with the provisions of EPA's proposed model rule, with the following clarifications:

3. For NSR offsets, use is allowed according to Subchapter 30.13(c), see ***Table 54.***
3. For conformity, NJDEP's OMET Program does not specify any requirements. see ***Table 54.***
4. Subchapter 30.13(b) clarifies the use of DER credits is allowed to comply with any requirements of an employer trip reduction program, but not to satisfy the compliance plan submittal requirement.
4. Subchapter 30.13(d)(6) clarifies that DER credits may not be used for ozone control standards set under section 183, *except for NO_x RACT and VOC RACT.*

In addition, DER credits may not be used to comply with the following State-specific requirements:

1. Incorporation of advances in the art of air pollution control under Subchapters 8 and 22.
2. Prohibition of air pollution under Subchapters 5, 8 and 22.
3. If the use of DER credits is accompanied by an increase in emissions of any HAP which exceeds the de minimis level designated for that HAP by EPA in proposed rules at 59 FR 15504, April 1, 1994.

Besides the limitations on use, NJDEP's OMET Program contains the following required uses:

1 An alternative VOC control plan approved under Subchapter 16 after August 2, 1996;
2 An alternative maximum allowable NO_x emission rate approved under Subchapter 19 after August 2, 1996;
3 An innovative NO_x control technology plan approved under Subchapter 19, if implementing the innovative control technology produces a smaller emission reduction than the owner or operator had stated that it would achieve; and
4 Provisions for a MEG alert under Subchapter 19.

Approvability: NJDEP's OMET Program requires the same limitations on use as the proposed model rule. In a couple instances, NJDEP clarified inconsistencies in the proposed model rule. First, the employer trip reduction program is no longer a Federal requirement, therefore, NJDEP is allowed to use DER credits to comply with the program. Second, while the proposed model rule prohibited the use of DER credits to meet ozone control standards under section 183, the intention was not to prohibit the use of DER credits to comply with NO_x and VOC RACT. NJDEP provides this clarification in their program.

New Jersey requires sources to compensate for an AEL with DER credits. Though this is not a prohibition on AEL's, New Jersey's OMET Program essentially sets an enforceable "cap" on the amount of credits used by a source granted an AEL.

Also, NJDEP supplemented the October 27, 1998 SIP revision with additional information on April 10, 2000, which contained amended provisions which allow municipal waste combustors to use DER credits to comply with certain Federal NO_x emission standards, as these Federal rules specifically acknowledge the ability of New Jersey owners and operators to comply with the Federal NO_x standard using DER credits. EPA is including these provisions as part of the rulemaking for the October 27, 1998 SIP revision to make these provisions federally-enforceable and therefore available as an option for sources in New Jersey to meet the December 19, 2000 final compliance date for Increment 5 of 40 CFR 62.14108(a)(5) of Subpart FFF.

Given the additional limitations on use and the required uses, NJDEP's OMET Program is consistent with EPA's guidance. **T**

TABLE 45.

EPA Requirement: VI. Geographic Scope of Trading -- (A) General Rule. "(1) In using DER's, user sources must comply with the requirements of this subsection (A) and the geographic limitations described in subsection (B). (2) DER use must be consistent with modeling analyses contained in an approved SIP; however, each DER use is not required to be supported by a modeling analysis specific to such use. (3) No provision of this section shall be construed to authorize use of DER's in a manner that interferes with any applicable requirement of the Act."

State Provisions: Please refer to ***Table 3***.

Approvability: EPA staff recommendation: NJDEP's OMET Program meets this requirement. **T**

TABLE 46.

EPA Requirement: VI. Geographic Scope of Trading -- (B) Geographic Scope. "(1) NO_X DER's. (a) NO_X DER's may be used in the same SIP modeling domain in which they were generated. (b) NO_X DER's generated inside a nonattainment or maintenance area may be used outside a nonattainment area, maintenance area, or modeling domain. (2) VOC DER's. (a) VOC DER's may be used in a nonattainment or maintenance area only if they were generated in the same nonattainment or maintenance area. (b) VOC DER's may be used in an attainment area that is not a maintenance area. (c) VOC DER's generated inside a nonattainment or maintenance area may be used outside a nonattainment area, maintenance area, or modeling domain."

State Provisions: Subchapter 30.17 contains the constraints on directionality and distance for trades.
A user source located in New Jersey may use a NO_x DER credit if the generator source is located:
(1) anywhere in New Jersey,
(2) outside New Jersey but in the same Air Quality Control Region as the user source, or
(3) outside New Jersey in a directionally correct area, south and/or west of New Jersey.
A user source located in New Jersey may use VOC DER credits if the generator source is located:
(1) anywhere in New Jersey, or
(2) outside New Jersey but in the same Air Quality Control Region as the user source.

Approvability: In the preamble to the proposed model rule, EPA encouraged States to assess their own unique situations in developing restrictions on directionality and distance of trades. NJDEP's OMET Program is largely consistent with the generic restrictions in the proposed model rule. With respect to NO_x, most of the areas specified in the NJDEP OMET Program fall within the same SIP modeling domain. There are areas south and west of the State which fall outside the same SIP modeling domain, however the analyses in EPA's NO_x Budget SIP Call, which demonstrate contribution of upwind areas

to nonattainment in downwind areas, support the possibility of trading NO_x emissions across different SIP modeling domains. With respect to VOC, NJDEP's OMET Program allows trading anywhere in New Jersey. The entire State of New Jersey is nonattainment for ozone and made up of four different nonattainment classification areas. However, most of the State is classified as severe nonattainment. Therefore it does not seem appropriate to creating any restrictions or discounts for trading VOC DER credits across the entire State, based solely on jurisdictional boundaries. On the contrary, allowing VOC trades across the entire State, without discounting, creates a more streamlined approach to trading.

In addition, on December 29, 1997, EPA issued "Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM-10 NAAQS". This guidance discussed a flexible approach for expanding the geographic size of the area from which States could obtain emission reductions to meet their annual average 3 percent per year Rate of Progress requirements. Specifically, the geographic area for substitution of VOC emission reductions remains at 100 km from the nonattainment area and the geographic areas for substitution of NO_x reductions remains at 200 km from the nonattainment area with possibility for additional expansion. EPA believes it should expand the allowable area for NO_x substitutions up to the entire States for those States in the core part of the Ozone Transport Assessment Group domain. The geographic scope of NJDEP's OMET Program is consistent with EPA's guidance for implementing the 1-hour ozone NAAQS. Lastly, The geographic scope of trading is one area that will be addressed in the program audit.
EPA staff recommendation: NJDEP's OMET Program meets this requirement. **T**

TABLE 47.

EPA Requirement: VI. Geographic Scope of Trading -- (C) Interstate Trading. "DER's may be used in a State other than the State in which they were generated if authorized representatives of the two States approve a binding interstate agreement that is approved by USEPA as a SIP revision for each State, and that contains at least the following provisions that apply to each DER use: (1) The authority of the State where the generator source is located agrees to provide the authority of the State where the user source is located with all relevant information concerning the generator source and the DER generation including, but not limited to, emission limitations and permits issued to the generator source, if any, as well as the Notice and Certification of Generation and supporting documentation, in a timely manner; (2) The authority of the State where the user source is located agrees to provide the state where the generator source is located with all relevant information, including the Notice of Intent to Use DER's and the Notice and Certification of Use and supporting documentation, in a timely manner; (3) The authority of the State where the generator source is located agrees to notify the authority of the State where the user source is located as to whether the DER has been used previously; and (4) The authorities of the States where the user and generator sources are located agree to enforce their individual State emission requirements as modified by any valid emissions trades."

State Provisions: Subchapter 30.17(d) provides that a DER credit generated in another state may be used in New Jersey only if the other state has regulations that require trading information be sent to New Jersey's Registry or a similar Registry which contains the same data elements, and prevents a user source from using DER credits generated in New Jersey if the user source is located to the south and/or west of New Jersey in an air quality control region which does not include any part of New Jersey. Interstate trading can only take place if an agreement exists between New Jersey and the other state which satisfies applicable EPA requirements and provides for the sharing of information.

As discussed in ***Section III.A.3.***, NJDEP submitted a MOU between the States of Connecticut and New Jersey. NJDEP submitted this MOU to receive EPA review and approval of the agreement, as required by the proposed model rule.

Approvability: Subchapter 30.17(d) is consistent with the proposed model rule, specifically because it requires a MOU for interstate trading and requires the two States to share information. Subchapter 30.17(d) also requires the MOU to be consistent with all applicable requirements established by EPA for interstate DER credit trading agreements. It is this general provision which requires the States to develop MOUs that are consistent with any EPA requirement or guidance. Therefore, NJDEP's OMET Program provides for the same requirements as specified in the proposed model rule.

In addition to the provisions of Subchapter 30.17, the MOU between New Jersey and Connecticut was submitted to EPA. This MOU includes the requirements from the proposed model rule discussed above. Specifically, the MOU requires, among other things, the following:

1. Each State will provide the other State with all relevant information concerning the generator source and the user source and the DER credit generation and use.

2. The generating State will notify the using State whether the DER credit has been previously used.
3. Each State will enforce their individual State emission requirements as modified by any valid emissions trades.

EPA has compared the June 1995 MOU between New Jersey and Connecticut to the requirements of the proposed model rule as well as the additional provisions contained in the proposed rulemaking for Michigan's Program and has determined the MOU to be consistent with all applicable EPA requirements and guidance and available for purposes of enforcement. EPA staff recommendation: NJDEP's OMET Program meets this requirement. **T**

TABLE 48.

EPA Requirement: VII. Recordkeeping and Public Availability -- (A) Recordkeeping. "The generator source shall adequately document the protocol and specific data by which a DER is quantified. Generator sources shall transfer all such documentation to any transferee at the time that ownership of a DER is transferred. The user source shall document the protocol and specific data by which the amount of DER's needed for compliance was determined. The user source shall maintain all relevant documentation for a minimum of five years after a DER is used for compliance. Records shall be kept with at least the same frequency as required for the underlying requirement."

State Provisions: Subchapter 30.9 and 30.18 contain the same requirements as the proposed model rule.

Approvability: EPA staff recommendation: NJDEP's OMET Program meets this requirement. **T**

TABLE 49.

EPA Requirement: VII. Recordkeeping and Public Availability -- (B) Public Availability. "All information submitted to the State for compliance with this rule shall be available to the public.....This information shall not be considered confidential business information. (1) The [State] will make all notices submitted by sources pursuant to this rule available for public review. For sources with operating permits, the [State] will attach copies of these notices to the copy of the operating permit retained in the State offices. For sources that do not have operating permits, the [State] will make these notices available in a similar manner....(2) The sources shall make all documentation that supports the notices submitted to the State as part of this rule available to the public....."

State Provisions: Subchapter 30.19 contains the same requirements as the proposed model rule.

Approvability: EPA staff recommendation: NJDEP's OMET Program meets this requirement. **T**

TABLE 50.

EPA Requirement: VIII. Protocol Development and Approval -- (A) General Rule. "To quantify the amount of DER's generated and the amount needed for compliance, sources shall use quantification protocols in accordance with the requirements of this section."

State Provisions: Subchapter 30.20(a) contains the same requirement as the proposed model rule.

Approvability: EPA staff recommendation: NJDEP's OMET Program meets this requirement. **T**

TABLE 51.

EPA Requirement: VIII. Protocol Development and Approval --
"(B) USEPA-Approved Protocols (Option 1).
(1) If a USEPA-approved protocol exists for a given application, it may be used.
(2) If a credit generator wishes to deviate to some extent from an approved protocol, or develop a new protocol, the generator must do so in accordance with guidance set forth by USEPA. The USEPA approval need not be obtained in advance, however, USEPA reserves the right to reject the protocol and any resulting credits whether or not the protocol was followed.

(B) USEPA-Approved Protocols (Option 2).
(1) If an EPA-approved quantification protocol exists for a given application, it must be used.
(2) If a credit generator wishes to deviate to some extent from an approved protocol, the credit generator must obtain advance

approval from USEPA.
(3) If an approved protocol does not exist, a new protocol shall be designed with the participation of affected parties according to a guidance set forth by USEPA. The USEPA approval need not be obtained in advance, however, USEPA reserves the right to reject the protocol and any resulting credits whether or not the protocol was followed."

State Provisions: Subchapter 30.20(a) requires generators and users to use emission quantification protocols. All generators and users must follow protocol development criteria contained in Subchapter 30.20. In addition, Subchapter 30.20(b) requires mobile source generators and users to use protocols which comply with all applicable EPA guidance. Refer to the "State Provisions" sections of ***Tables 11 and 13*** for a detailed discussion of NJDEP's OMET Program.

Approvability: In EPA's proposed model rule, two options were presented regarding EPA-approved protocols. Option 1 allows a source to use an existing EPA-approved protocol or develop a protocol in accordance with general guidance from EPA. Option 2 requires sources to use existing EPA-approved protocols or to have protocols approved by EPA. Since the proposed model rule stated Option 1 or Option 2 will be selected for the final model rule, this issue was never clearly resolved. In EPA's proposed action on Michigan's emissions trading program, additional guidance was provided on emission quantification protocols. The September 18, 1997 Federal Register Notice states ".....Michigan's emission trading program already contains the requirement that emission reduction credits be real, surplus, enforceable, permanent, and quantifiable. In order to ensure that these criteria are met, Michigan must take two steps; first, incorporate into the emissions trading rules a requirement that sources in categories without EPA-approved protocols must follow a set of EPA-approved protocol development criteria that have been provided to MDEQ (Letter from David Kee to Dennis Drake, July 1, 1997) when developing protocols for their source category, and second, commit in the SIP to require use of existing and future EPA-approved protocols for quantifying emission reductions at applicable sources, and to allow sources to deviate from an EPA protocol only if they first get the approval of EPA." (62 FR 48975).

NJDEP's OMET Program contains protocol development criteria in Subchapter 30.20, which is consistent with the approach outlined in Option 1 of the proposed model rule and the first requirement contained in EPA's proposed action for Michigan. NJDEP's OMET Program requires mobile source generators and users to use a protocol which complies with EPA guidance. Therefore, with respect to mobile sources, NJDEP's OMET Program is consistent with Option 1 and Option 2 of the proposed model rule and the first and second requirement contained in EPA's proposed action for Michigan.

With respect to stationary sources, NJDEP's OMET Program does not directly require protocols to comply with all applicable EPA guidance. NJDEP has stated it will review any EPA-approved protocols or guidance for stationary sources to determine whether it needs to incorporate it by reference, similar to what the State has done with mobile sources. In addition, Subchapter 30 already contains the requirement that DER credits be real, surplus and properly quantified. The generator bears the burden of proving that it has in fact generated DER credits in accordance with the rules and that the DER credits are real, surplus and properly quantified (Subchapter 30.21). Also, based on its experience in emissions trading programs, NJDEP has included protocol development criteria in Subchapter 30.20 which addresses the general elements that would be characteristic to stationary sources and therefore contained in a stationary source protocol. Lastly, NJDEP submitted ten early credit generation strategies to EPA in the SIP revision. In reviewing these strategies (see ***Section III.B.4.***), EPA not only used Agency guidance, but compared the emission quantification protocols to the requirements found in NJDEP's OMET Program. In all instances, the strategies either met or did not meet the requirements of the OMET Program. If EPA discovered a deficiency in any of the strategies, the issue was a specific deficiency in the protocol, and not a deficiency with the protocol development criteria contained in NJDEP's OMET Program.

However, to further ensure that the above mentioned criteria in NJDEP's OMET Program are met, NJDEP must also incorporate into Subchapter 30.20 a requirement that if an EPA-approved protocol exists, sources must use that protocol for quantifying emission reductions at applicable sources, and to allow sources to deviate from an EPA protocol only if they first get the approval of EPA. Also, Subchapter 30.20(f)(2)(i) and (ii) reference alternative monitoring plans and test methods approved by New Jersey. New Jersey should clarify that these references are already part of the SIP, and are not Director discretion issues. Related discussion is presented in Tables 11, 13. EPA staff recommendation: NJDEP's OMET Program does not meet this requirement. **X**

TABLE 52.

EPA Requirement: VIII. Protocol Development and Approval -- (C) Protocol Elements. "Protocols must contain methods that are credible, workable, enforceable, and replicable and must include each of the following elements: (1) A description of the calculation methods used for determining the reductions achieved by the emissions controls as implemented; (2) Estimates of the accuracy of the appropriate USEPA test method, if available, not to exceed some given value; (3) A description of the recordkeeping program that permits verification of production, materials used, and use of control equipment; (4) The USEPA test methods where available; and (5) A requirement for complete, verifiable records on production, materials used and use of control equipment."

State Provisions: Subchapter 30.20(c), (d), (e), and (f) included, among other things, the same requirements contained in the proposed model rule. In addition, these provisions of NJDEP's OMET Program include the same criteria referenced in EPA's proposed action for Michigan (July 1, 1997 Letter from Kee to Drake).

Approvability: EPA staff recommendation: NJDEP's OMET Program meets this requirement. **T**

TABLE 53.

EPA Requirement: VIII. Protocol Development and Approval -- (D) Emission Quantification Methods. "A protocol may contain the following: (1) Emission quantification methods contained in an applicable Federally approved operating permit; or (2) Emission quantification methods approved in the applicable SIP."

State Provisions: Subchapter 30.20(e) and (f) contain provisions consistent with the proposed model rule.

Approvability: EPA staff recommendation: NJDEP's OMET Program meets this requirement. **T**

TABLE 54.

EPA Requirement: IX. DER Use for NSR and Conformity Purposes -- (A) General Rule. "All DER's used to meet-- (1) NSR offset requirements shall comply with the requirements of section 173 of the Act and 40 CFR 51.165(a) including the requirements of subsection (B) of this section. (2) Conformity requirements shall comply with 40 CFR part 51, subparts T and W and part 93 subparts A and B."

State Provisions: Subchapter 30.13(c)(1) includes the same requirement as the proposed model rule for NSR offsets. With respect to conformity, NJDEP's OMET Program does not reference the conformity requirements, however, the proposed model rule only reiterates the citation of the Federal requirements.

Approvability: EPA staff recommendation: NJDEP's OMET Program meets this requirement. **T**

TABLE 55.

EPA Requirement: IX. DER Use for NSR and Conformity Purposes -- (B) Specific Requirements for NSR. "(1) The State must approve the use of specific DER's that cover at a minimum 1 year of operation of the new or modified source in the NSR permit. (2) The NSR permit must contain an enforceable requirement that the source obtain at least one additional year of offsets before continuing operation in each subsequent year. (3) The NSR permit must contain an enforceable commitment that before receiving any operating permit or permit renewal, the operating permit must contain an enforceable condition that the source must obtain offsets for each subsequent year before continuing to operate in each subsequent year."

State Provisions: Subchapter 30.13(c) contains the requirements for DER credits to be used to comply with emission offset requirements under Subchapter 18:

(1) DER credits to be used for offsets must be generated at the same time they are used;
(2) the generator enters into a binding agreement to generate the DER credits;
(3) the user enters into an enforceable commitment to continue to obtain DER credits for the life of the equipment or until emission offsets are secured under Subchapter 18;
(4) DER credits are verified each year before April 30 of the following year;
(5) the permit issued under Subchapter 22 and 18 allows for the use of DER credits;
(6) all other requirements of Subchapter 18 and 30.

Approvability: The proposed model rule contains specific requirements for using DER credits for new source review offset requirements. The intent behind these specific requirements is for the new or modified source to secure a series of DER credits over the life of the source. EPA believes that, though not requiring DER credits one year in advance of the subsequent year source operation, NJDEP's OMET Program contains requirements which address the same intent – to secure a series of DER credits over the life of the source. In addition, NJDEP is requiring the DER credits to be generated at the same time they are used. This requirement, in addition to the requirement the source commit to obtain DER credits for the life of the equipment, provides more certainty to the State and EPA that the DER credits will be contemporaneous, offsetting emission reductions prior to each year of operation, consistent with section 173(a).

NJDEP's OMET Program contains specific requirements which provide for the source to submit demonstrations to the State for the generation and use of "emission reductions" to meet the emission offset requirements. The only additional provision is to allow for the incremental funding of new source review offsets through DER credits. In this respect, DER credits used for NSR offsets are the same as emission reduction credits or ERC's.

EPA staff recommendation: NJDEP's OMET Program meets this requirement. **T**

TABLE 56.

EPA Requirement: X. Program Audits -- (A) Beginning no later than [the next ROP milestone year or date 3 years after State adoption of this rule] and at least every 3 years thereafter (coinciding with the periodic inventory submittals required under section 182 of the Act), the [State authority] shall audit this program to evaluate at a minimum, the following program elements: (1) Amount and timing of emission reductions (e.g., DER's used compared to DER's generated in a given year or ozone season); (2) Compliance by generators and users; (3) The effect of the program on temporal and spatial assumptions in the attainment demonstration, and ROP plans; (4) The effects of remedial measures, if applicable, implemented as a result of previous audit findings. (5) The effects on toxic emissions from operation of this rule. (B) As determined by the [State authority], the [State authority] shall institute remedial measures to the extent necessary. (C) The audit data and results shall be completed, submitted to USEPA, and available for public inspection within one year after the audit begins.

State Provisions: Please refer to the 'State Provisions' section in ***Table 19***.

Approvability: EPA staff recommendation: NJDEP's OMET Program meets this requirement. **T**

TABLE 57.

EPA Requirement: XI. Enforcement -- (A) Compliance Burden. (1) The DER user source is responsible for assuring that the generation and use of DER's comply with this rule. (2) The DER user source (not the enforcing authority) bears the burden of proving that DER's used are valid and sufficient and that the DER use meets all applicable requirements of this rule. The DER user source is responsible for compliance with its underlying obligations. In the event of enforcement against the user source for non-compliance, it shall not be a defense for the purpose of determining civil liability that the user source relied in good faith upon the generator source's representations.

State Provisions: Subchapter 30.21 divides compliance responsibilities among the generator, verifier and user. In general, the generator, verifier and user is responsible for actions within his/her control, and a generator, verifier or user is in violation of N.J.A.C. 7:27-30 if they do not fulfill their respective responsibilities. In any enforcement action, the generator, verifier and user bear the burden of proof on each of their respective responsibilities. The verification step does not replace the liability of the generator or the user under the rule.
Please refer to the discussions in ***Table 22***.

Approvability: In its proposed model rule, EPA promoted a "buyer-beware" liability system where the user source is responsible for assuring the generation and use of DER credits complied with the underlying rule. However, EPA also solicited comment on several other liability options including a pre-approval requirement, splitting liability between generator and user and relying on third party guarantors.

NJDEP's OMET Program and the EPA's proposed model rule differ substantially with respect to the **verification** of DER credits. The EPA's proposed model rule creates a "buyer-beware" trading system. Under this system, the user must ensure that the DER credits it uses were generated in compliance with the rule, but has no comfort that its conclusion will be

accepted by any regulatory agency. NJDEP believes that a buyer-beware system will be difficult to administer, and will discourage many businesses from participating in the DER credit market. To address these problems, NJDEP's OMET Program requires a user to have DER credits verified before using them. The verifier would confirm that the DER credits were generated and correctly quantified in accordance with the rules.

Though EPA proposed a “buyer-beware” system in part to address the difficulty that states may have in taking enforcement action against out-of-state generators, NJDEP believes that enforcement of a buyer-beware system could be too problematic to be a credible deterrent in an atmosphere where smaller state budgets are the norm. It would be technically difficult and resource-intensive to enforce a pure buyer-beware system. To determine whether a user is in compliance under any emissions trading system, a state agency would need to verify that the DER credits a user is holding to cover its compliance obligations are real, surplus and properly quantified. To do this, the enforcing agency would need to review all documentation related to the generation of the DER credits; determine whether that documentation is sufficient to support the conclusion that the DER credits are real and surplus; determine whether the documentation is true, accurate and complete; determine whether the user has selected an appropriate quantification protocol; and determine whether the user has properly applied the protocol and correctly quantified the DER credits. Even if the enforcing agency's inspectors have the full range of expertise needed to perform all of these tasks, the time and effort needed to complete them makes it unlikely that the agency would have the resources to inspect a reasonable number of user and generator facilities. This lack of resources would have the potential to encourage the generation of questionable DER credits with little risk for the generator.

In addition, these tasks are made especially difficult when the generator is located in another state. New Jersey expects that differing regulatory requirements among states make it likely that many of the DER credits used inside New Jersey will be generated outside New Jersey. Verifying that DERs are real, properly quantified and surplus would probably require travel to the state of generation. Once there, New Jersey inspectors may have difficulty in gaining access to the generator's facility and its records. Even if the inspector gains such access and finds problems with the generation, New Jersey is unlikely to have the power to take enforcement action against the generator. Agreements between generator and user states requiring the generator state to take enforcement action will be little help; with its own enforcement priorities to balance, the generator state cannot be expected to give priority to the user state's enforcement cases.

A “buyer-beware” system also creates problems that may discourage many potential users from participating in the market. Even if enforcement of the system is problematic, NJDEP believes that most users will nonetheless seek to comply with trading regulations. In attempting to verify that DER credits are real, properly quantified and surplus, a conscientious user will face the same problems that an enforcing agency will face, but worse; the user will not have the enforcing agency's governmental authority, and may not have the same level of expertise.

Approvability: (Continued) These problems may discourage many such prospective users from participating in a strictly buyer-beware system.

As a result, a conscientious user may make a rational choice against participating in the DER credit market. In an early workshop held by NJDEP, several potential users confirmed that they would make this choice. However, market participants would still include the users who seek to take advantage of the enforcement difficulties and are aware that enforcement sanctions are unlikely; and the users who are not sufficiently savvy to understand all of the work involved in verifying DER credits under a buyer-beware system.

NJDEP recognized the desire to create a market in DER credit that is as open and as free from intervention as possible, to encourage trading. However, for the reasons discussed above, the buyer-beware approach, though open, may instead discourage trading and thereby prevent the development of a robust market in DER credits. NJDEP believes that this problem can be addressed if potential users are able to rely upon a professional verification. Absent any uniform national verification system run by EPA or a third party approved by EPA, NJDEP is requiring users to have DER credits verified before use by a New Jersey-licensed professional engineer or certified public accountant. The verifier must be independent of the generator, because the generator's interest in having DER credits verified to increase their market value could conflict with the verifier's interest in verifying only valid DER credits. The verifier need not be independent of the user, because this conflict of interest would not arise between the verifier and the user.

As stated in the proposed model rule, the model rule is neither mandatory nor prescriptive. States would be free to tailor their own programs and EPA has encouraged States to harness compliance tools appropriate to their particular circumstances. For the reasons stated above, NJDEP believes their OMET Program reflects the localized concerns and priorities of the State in implementing an open market emission trading program. EPA believes the liability scheme presented by NJDEP has the advantage of making each party responsible for actions under its own control. It also has the potential of reducing the transaction costs involved with constructing legal arrangements to give a DER credit user information and certainty about DER credit generation activities. Finally, EPA has stated in its comments in guidance to NJDEP that there is no one way to develop and implement an open market trading program. Therefore, while different from the proposed model rule, NJDEP's liability scheme provides an enforceable mechanism for NJDEP's OMET Program.
EPA staff recommendation: NJDEP's OMET Program meets this requirement. **T**

TABLE 58.

EPA Requirement: XI. Enforcement -- (B) Violation Day Definition for User Source Excess Emissions. Section 113(b) of the Act authorizes a maximum civil penalty of $25,000 per day for each violation. For purposes of this regulation, the number of days of violation associated with improper DER use or insufficient DER quantity shall be the number of consecutive days with insufficient DER quantity after taking into account DER's used to offset excess emissions (converted to units of mass) on a consecutive day basis. If a user is unable to document actual emissions rate on a daily basis, the number of days of violation shall include every day since the beginning of the use period during which there was insufficient DER's. Failure to keep adequate records is equivalent to a lack of creditable DER's. *(NOTE: Pursuant to rulemaking action, penalties under section 113 may now be up to $27,500.)*
State Provisions: Subchapter 3 -- Civil Administrative Penalties and Requests for Adjudicatory Hearings establishes civil administrative penalties for violations of rules adopted pursuant to the Air Pollution Control Act. The amendments to this Subchapter revise the penalty schedule to reflect the new rule Subchapter 30. In some cases, a user's failure to comply with Subchapter 30 may prevent the use of DER credits for compliance with an emission limit. In such cases, if the user exceeds the emission limit it would be in violation of existing provisions and the existing rules contain penalties for such violations. Also, the general sections at Subchapter 3.5 specify that each violation constitutes a separate and distinct offense, and each day during which a violation continues shall constitute an additional, separate, and distinct offense.
Approvability: EPA staff recommendation: NJDEP's OMET Program meets this requirement, with the exception of monetary penalties, as discussed in Table 22. **X**

Section III.B.3. Other Approval Topics

The following sections provide additional information on other topics which were considered in EPA's review of NJDEP's OMET Program.

Section III.B.3.a. Adverse Local Impact of HAP Emissions

In designing VOC economic incentive programs, it is important to recognize that many VOCs are also hazardous air pollutants (HAPs) as defined by the list of HAPs contained in the Act. Therefore, as part of the Agency's air and community protection goals, EPA is committed to protecting the health and environment of local communities from any negative impacts related to VOC trading. EPA is also committed to providing flexibility for local-decision making that can allow for different circumstances in different localities.

Independent of trading programs, sources involved in VOC trading are required to meet all applicable current and future air toxics requirements. In addition, EPA believes VOC trading programs should build in safeguards for air toxics. In the September 15, 1999 proposed revisions to the EIP guidance of 1994, EPA outlined the Agency's draft framework

for addressing HAP-related issues in VOC trading programs. The draft framework says VOC trading programs must contain the following general HAP-related elements:

(1) A **program review** of the trading program to evaluate the impacts of VOC trades involving HAPs on the health and environment of local communities, **and mitigation of negative impacts.** This could include prospective and/or retrospective evaluation of the program and could include evaluations of specific trades. Mitigation could include up-front prohibition of certain types of trades, limits on specific trade amounts, or after-the-fact changes to address such impacts.

(2) **Public participation in program design, implementation and evaluation** is necessary to provide assurance that the public can have a substantial role in building and implementing this program and can act as a self-policing mechanism in the evaluation process.

(3) **Sufficient information must be made available for meaningful review and participation.** This element ensures that all parties have an understanding of specifically what HAPs are components of the VOCs being traded and enables the public participation and program review elements to be implemented. It can also serve as a mechanism to provide broader oversight by the community and provide an incentive to facilities to carefully consider the impact of trades before proposing them.

These elements can be combined in various ways to produce a program that will protect local communities by avoiding the creation of toxic hot spots, and by protecting against fraud and other potential impacts of VOC trading.

NJDEP's OMET Program is more restrictive than EPA's proposed open market trading model rule with respect to HAPs. The proposed model rule requires a user source to disclose the amount of HAPs that will be emitted as a result of the use of DER credits. NJDEP's OMET Program ***prohibits*** the generation or use of DER credits which results in more than de minimis increases in HAP emissions. (These de minimis levels affect when MACT would be applied.) NJDEP's OMET Program also requires disclosure of smaller increases in HAP emissions resulting from DER credit generation or use. NJDEP requested the EPA to include a similar prohibition in its final rule, or at least to provide for a risk assessment to evaluate the effects of the HAP emissions on the community surrounding a facility.

In its proposal of the OMET Program, NJDEP stated it:
"*believes that the benefits of a more restrictive approach to HAP emissions substantially outweigh the costs. A generator which cannot generate DER credits because HAP emissions will increase will incur costs which are essentially speculative; the cost is the foregone profit, if any, which the generator would earn by trading the DER credits. A user which cannot use DER credits because the use would increase HAP emissions will incur costs to comply with air pollution control requirements through other means. The extent of those costs will depend upon the cost differential between compliance through trading and compliance through other means.*

The benefits of the more restrictive approach are essential, but difficult to quantify as a dollar amount. There is great public concern about the potential link between higher incidences of lung cancer and higher concentrations in the ambient air of HAPs. Unless the new rules address this concern, public support for open market emission trading is likely to be undermined; if the public opposition to open market trading resulted in an end to the program, the opportunities for cost

savings discussed in the Economic Impact statement above could also be eliminated.

NJDEP will work with the public and the regulated community to determine whether a less restrictive approach, possibly involving risk assessment, will be sufficient to address the potential for health risks and allay the public's concerns. Such approaches will be explored in the second stage of the open market emission trading rules."

EPA agrees with the NJDEP that its approach to HAP emissions is more restrictive than the Agency's proposed model rule. In its response-to-comments, NJDEP stated EPA's de minimis levels are the best guide currently available for determining when a HAP emissions increase is significant and should not be allowed to occur in order to generate or use DER credits. EPA agrees with this statement.

Though New Jersey adopted and submitted their OMET Program prior to the 1999 proposed EIP, New Jersey's OMET Program, and New Jersey's process for adopting the OMET Program, is consistent with the framework for addressing HAP-related issues in VOC trading programs. The following sections discuss how New Jersey's OMET Program addresses the four HAP-related measures contained in the 1999 proposed EIP.

1. Prevention and Mitigation Measures:

The 1999 proposed EIP indicates open market trading programs allow emissions to remain above existing rate limitations, with compensating emission reductions at another source. Therefore, open market programs must include prevention measures that safeguard against unacceptable localized VOC/HAP emission levels. The first option suggested in the 1999 proposed EIP is a restriction on any activities that yield increases in allowable emissions above de minimis levels. The 1999 proposed EIP further refers to the proposed section 112(g) hazard ranking to assist in defining de minimis levels.

New Jersey's OMET Program includes prevention measures of unacceptable impacts from potential or actual trades, or other types of transactions including HAPs, by requiring an up-front prohibition on the generation and use of credits which are accompanied by an increase in HAPs above a de minimis level. This up-front prohibition is consistent with the first option in the 1999 proposed EIP. New Jersey's OMET Rule also specifically refers to the proposed section 112(g) hazard ranking to define the de minimis levels. These de minimis levels affect when MACT is applicable. While this information may be outdated, EPA's proposed de minimis levels were the best guides available, when New Jersey adopted their OMET Program, for determining when a HAP emissions increase is significant and should not be allowed to occur in order to generate or use credits. New Jersey also stated in the OMET Rule that it will do an administrative correction, should EPA finalize these de minimis levels, or propose new levels. These provisions of New Jersey's OMET Program are more restrictive than EPA's 1995 proposed open market trading rule with respect to HAPs. The proposed open market rule requires a user source to disclose the amount of HAPs emitted as a result of the use of credits. New Jersey's OMET Program *prohibits* the generation or use of credits which results in more than de minimis increases in HAP emissions. New Jersey also requires disclosure of smaller increases in HAP emissions resulting from credit generation or use. New Jersey believed the benefits of a more restrictive approach to HAP emissions substantially outweigh the costs of meeting the provisions, given the great public concern about the potential link between higher incidences of lung cancer and higher concentrations in the ambient air of HAPs. New Jersey stated in their adoption documents that unless the OMET Program addresses this concern, public support for open market emission trading is likely to be undermined. New Jersey requested EPA to include similar prohibitions in a final open market rule

Also, the program audit could provide for other retrospective prevention and mitigation measures, as discussed later.

2. Sufficient Information Availability:

The 1999 proposed EIP indicates the program should provide the necessary information that will be used in the program evaluation. This information should reflect the type of prevention/ mitigation options selected, indicate the type of information, the level of detail to the information, the frequency of record keeping and reporting, and the availability of information.

New Jersey's OMET Program provides for the availability of sufficient information to evaluate the program. New Jersey's OMET Rule contains numerous provisions which require the Notices of Generation, Notices of Transfer, Notices of Verification, Notices of Intent to Use, and Notices of Use that are filed with the Registry to contain sufficient and appropriate information. These Notices specifically contain information and statements related to the emissions of HAPs. For example, the rule requires the Notice of Generation to include the amount of any increase in emissions of any HAPs, resulting from the reduction of emissions to generate credits. All sources are required to include this information, not just sources subject to the Toxics Release Inventory reporting requirements. In addition, EPA will condition its approval of New Jersey's OMET Program on these Notices including information on foregone reductions of HAPs.

The Notice and emission quantification protocol provisions of New Jersey's OMET Rule address the information necessary to evaluate the prevention/mitigation measures (i.e., prohibition on HAPs above de minimis). The provisions on General Notice Requirements, Subchapter 30.16 require each Notice contain all supporting information required by the protocol provisions, and the protocol provisions, Subchapter 30.20, require the protocol to include information on any increase in actual emissions. The type of source and the credit generation/use activity will dictate the type of information and level of detail to be included in the Notices, as well as the frequency of record keeping.

Sources will report this information anytime a Notice is filed with the Registry. Since credit generation and credit use periods do not exceed one year, Notices will be submitted annually, at the minimum. This reporting is in addition to any other EPA reporting requirements, such as the National Toxics Inventory.

Finally, this information is readily available to all parts of the community, including regulators and the public, since the Registry, which contains all Notices, is available on the Internet. If the public does not have access to the Internet, Subchapter 30.19, also specifically requires all information to be publicly available, and available to any person upon request.

3. Public Participation Provisions:

The 1999 proposed EIP notes public participation is important in three phases of trading programs: the program development phase, the program implementation phase, and the mid-course evaluation phase. New Jersey includes public participation in the design, implementation and evaluation of their OMET program.

New Jersey provided for public participation in the design of the OMET Program through a public workshop on September 19, 1995 to have an open discussion of the issues on open market trading with interested parties. Approximately forty individuals attended the workshop. After considering the discussions at the workshop, New Jersey proposed their OMET Program on February 20, 1996. New Jersey held a public hearing on March 7, 1996 and the

public comment period ended March 21, 1996. After adopting the OMET program on July 1, 1996, New Jersey established a stakeholder workgroup which has met every other month since the adoption of the OMET Program. These meetings are open to the public and discuss implementation of the OMET Program and ways to improve its environmental and economic effectiveness. Attendance at these meetings varies from month to month. Though the meetings are open to the public, the majority of participants are from the industry and trading sectors.

The public can also provide input on an activity-by-activity basis since all Notices and all trades are available from the Registry on the Internet. Finally, New Jersey will utilize the stakeholder workgroup to provide for public review and comment on the program audit, as discussed later.

In addition to New Jersey's processes and opportunities for public participation, the Regional Office is also providing for additional public input in the SIP revision process for New Jersey's OMET Program. Region 2 is interested in ensuring adequate public participation from all stakeholders in all communities. Therefore, Region 2 plans to undertake the following communication strategy on the proposed action for New Jersey's OMET Program SIP revision:

- Lengthen the usual public comment period from 30-days to at least 45-days

- Upon signature by the Regional Administrator, mail copies of the proposed action and supporting documents to specific environmental and environmental justice contacts in the State of New Jersey

- In addition to the Federal Register, publish Public Notices

- In coordination with New Jersey, conduct a series of public availability sessions, both day and evening, throughout the State, to answer questions and foster meaningful public comment on the proposed SIP action

- Provide technical information at the public availability sessions which goes beyond the usual SIP submittal documents, such as an analysis of trading to date using the Geographic Information System as a screening tool, discussed later

- Plan public availability sessions well in advance to allow for timely submittal of well-informed public comment.

4. Periodic Program Evaluation:

The 1999 proposed EIP indicates a program evaluation to address HAP-related issues could be both prospective and/or retrospective. Further, this evaluation can be a broad program evaluation, an activity-specific review, or a community-specific analysis.

When New Jersey proposed their OMET Program in 1996, the State indicated it was adopting the Program in two stages. Stage one would consist of the basic framework for the OMET Program, represented by the February 20, 1996 proposal. The proposal stated Stage two will address issues that were not resolved in stage one and will also correct any problems the State and interested parties identify in stage one, which require changes. In the response-to-comment document, which accompanied the July 1, 1996 adoption, New Jersey further clarified the requirement for an enforceable commitment to have a program audit as follows:

"The Department will be submitting the Open Market Trading Rule to the United States Environmental Protection Agency (EPA) as a revision of its State Implementation Plan. In this submittal the Department intends to address the matter of periodic program audits. The EPA has proposed Open Market Trading Rules which require program audits at every Rate of Progress (ROP) milestone (or every three years). The EPA proposal would require that the audit address the amount and timing of emission reductions, compliance by generators and users, the effect of the program on temporal and spatial assumptions in a state's attainment demonstration and ROP plans, the effects of remedial measures (if applicable), and the effects on toxic emissions from operation of the rule. If the EPA adopts its rules or issues the provisions as guidance, the Department will ensure that any audit meets the standards and requirements for audits set forth in the USEPA rules or guidance. In any case, the Department recognizes its responsibility to ensure that the Open Market Emission Trading Program, as implemented, is consistent with the goals of rate of progress and of attainment in New Jersey, in respect to the national ambient air quality standard for ozone and does not result in continued non-attainment in New Jersey and downwind areas."

The October 27, 1998 SIP submittal letter from Commissioner Shinn, contains an enforceable commitment by New Jersey "to meet reasonable program audit requirements established in federal regulations and/or guidance." An attachment to the SIP submittal explains New Jersey's audit commitments:

"The Department will ensure that an audit is performed at least every three years which meets applicable USEPA guidance, and will provide timely post-audit reports to the USEPA. At a minimum, the Department will include the following elements in the audit:

1. An evaluation of the net effect of the New Jersey OMET Program on actual emissions (as required at 40 CFR 51.493(f)(3));
2. Verification that in each ozone season the number of DER credits generated will be equal to or greater than the number used . . . ; and,
3. To the extent practicable, an evaluation of the cost savings (as required at 40 CFR 51.493(f)(3)).

Also, the audit will determine whether there is a shortfall between the results claimed for the New Jersey OMET Program and the actual results obtained during program implementation. If there is a shortfall, New Jersey will submit to USEPA, with the post-audit report, measures to remedy program deficiencies and, if applicable, measures to make up any emissions shortfall within a specified period of time consistent with relevant RFP and attainment requirements, (Required at 40 CFR 51.493(f)(3)(ii)).

The State anticipates that information generated by the Registry operator will be a useful source of information for the audit. The Department's contract with the Registry operator requires the Registry operator to provide monthly reports to the Department which contain, among other things, a list by sector (stationary, mobile, off-road, and area) of each type of generation and use, the total numbers of DER credits generated in the ozone season, total reported increases in HAP emissions, and a list of all companies that have generated, transferred, verified or used DER credits."

Also, in addition to program evaluation, evaluation can also occur on a source-by-source level through the public accessibility of the Registry on the Internet. Regulators and the public will be able to track the generation and use of credits to review the implementation of specific trades.

Since New Jersey's commitment to do a program evaluation includes reference to "any applicable EPA guidance on audits," New Jersey and EPA could use the guidance contained in the 1999 proposed EIP as part of the program evaluation. Therefore, New Jersey's retrospective program evaluation could review the specific questions raised in the HAP framework that were not readily available when New Jersey adopted their OMET Program. New Jersey could review areas such as, the use of more recent health hazard information, other prevention/mitigation options, whether to evaluate the program broadly, and/or do an activity-specific review and/or a community-specific review, etc.

New Jersey considered the prospective element of the program evaluation by including the prohibition of HAPs above de minimis and then committing to check on this provision during the three-year audit.

The 1999 proposed EIP also includes a discussion on how to determine which communities need special protection. This is another area that New Jersey will address in more detail in the periodic program evaluation.

In summary, New Jersey's Open Market Trading Program contains the following provisions, protecting against high air toxic concentrations:

- A prohibition on the generation of credits if there is more than a *de minimis* increase in hazardous air pollutant emissions.

- A prohibition on the use of credits if they result in hazardous air pollutant emission increases that exceed de minimis levels.

- A requirement to certify in all Notices whether there is any increase in hazardous air pollutant emissions (to date, sources certified in *all* Notices that there were no increases.)

- A requirement to disclose smaller increases of hazardous air pollutant emissions resulting from the generation or use of credits.

- A requirement to "retire" an additional 10 percent of credits whenever credits are used.

- Other general provisions in other New Jersey Regulations which prohibit any air contaminant to be present in the atmosphere which is injurious to human health and welfare.

At the time in which this TSD was issued, NJDEP's OMET Program was consistent with EPA's current thinking on addressing HAP-related issues in VOC trading programs. As the Agency continues to develop additional guidance, it will provide this guidance to NJDEP as it continues to discuss these and other issues in the program audit and the stage two workgroup process of its OMET Program, of which EPA is a participant.

Section III.B.3.b. Claiming Ownership of DER Credits

Subchapter 30.4(a) provides some specificity on which parties are eligible to generate DER credits and claim ownership. Generally, "the owner or operator of a source may generate DER credits. In addition, any person may generate DER credits through the reduction of emissions from sources not owned or operated by that person, by causing emission reductions to result from either (1) a reduction in mobile source activity levels resulting from an activity reduction

plan approved by EPA and the State, or (2) a reduction in an electric generator's activity level resulting from electrical energy efficiency measures."

However, NJDEP's OMET Program does not include a discussion specifying which parties are eligible to generate DER credits in situations where more than one party has a potential claim. This issue is significant because the rights to credits generated by a particular credit generation strategy will be unclear in some cases. For instance, a manufacturer of a device that reduces automobile emissions might attempt to register credits based on the sale of the device within New Jersey. However, an owner of a vehicle fleet might also attempt to register credits based on his or her installation of those same devices within the fleet. Registration of both sets of credits would double count the emission reductions, leading to excess credits being generated.

NJDEP must address the issue of ownership claims in its regulation and make provisions for reporting ownership claims in the Notices of DER Credit Generation.

Section III.B.3.c. Notification of Metropolitan Planning Organizations

New Jersey should require notification of the relevant Metropolitan Planning Organizations and Departments of Transportation in the event of mobile source generation activities. To avoid double-counting the emission reductions generated by mobile sources in trading programs, the state must ensure coordination between the emission trading program and the conformity analyses in the area in which the trading program takes place. Metropolitan Planning Organizations should not use any reductions they receive notice about, for transportation conformity. Similarly, the trading program should not use reductions the Metropolitan Planning Organizations rely on in a transportation conformity determination. New Jersey should require a generator of mobile-source emission reductions to notify the Metropolitan Planning Organizations in the area, and the State Department of Transportation of the generator's intention to generate emission reductions. The generator must provide enough information to the Metropolitan Planning Organizations about the likely emission reductions from the activity to allow the Metropolitan Planning Organizations to adjust its regional conformity analyses appropriately. Once notified, the Metropolitan Planning Organizations may not use these emission reductions to satisfy the requirement for transportation conformity.

Section III.B.3.d. Notification of Federal Land Managers

EPA has a policy of providing special protection for Class I areas (pristine environments such as international parks and large national parks and wilderness areas), as required under sections 160 through 169 of the Clean Air Act. This policy includes keeping Federal Land Managers informed of activities that could affect air quality in Class I areas. In accordance with this policy, to receive EPA approval, emissions trading programs must include provisions requiring that the relevant Federal Land Manager be notified 30 days before any DER credit use activity occurs in, or within 100 km of, a Class I area. NJDEP's rule contains no such notification provisions. This deficiency could be corrected by rule revision, or by procedures submitted as part of the SIP which require NJDEP to forward notices of use which involve increases within 100 km of a Class I area to the Federal Land Manager.

Section III.B.3.e. EPA's Comments Prior to SIP Revision Submittal

EPA submitted comments to NJDEP on March 15 and 21, 1996 on the Proposal for the OMET Program. These comments were on the following topics: verification; pre-1995 DER credit generations; registries; deadlines for submitting

Notices; HAP emissions; geographic scope of trading; quantification protocols; and the definition of curtailment. All of these comments were addressed in the adoption of the OMET Program, with the exception of EPA's comments on quantification protocols. Please refer to ***Tables 11 and 51.*** EPA also provided informal comments to NJDEP on April 30, 1996 and May 22, 1996. These comments were addressed in the adoption of the OMET Program.

On February 11, 1998, EPA sent a letter to NJDEP which discussed the status of NJDEP's OMET Program. One of the attachments to this letter included a systematic review of each provision in NJDEP's OMET Program according to existing open market trading guidance available at that point in time. In essence, this letter provided an informal, general review on how EPA viewed the approvability of NJDEP's OMET Program. This letter identified several deficiencies which NJDEP should consider when it proposes amendments to the Program. EPA has decided to reiterate these deficiencies as proposed conditions for approving NJDEP's OMET Program.

Finally, EPA provided guidance to NJDEP on submitting the OMET Program as a revision to the SIP on November 26, 1996, February 11, 1998 and May 15, 1998. As discussed in this TSD and evidenced by EPA's completeness letter, all of EPA's comments on the SIP submittal have been addressed.

Section III.B.3.f. Ozone Transport Commission NO_x Budget Program and EPA's SIP Call

NJDEP, the other Ozone Transport Commission States and EPA, have developed future NO_x trading rules which will have broader applicability to stationary sources of NO_x. NJDEP's NO_x trading rule is Subchapter 31 "NO_x Budget Program." Similarly, EPA finalized a rule requiring certain States to submit SIP measures (SIP Call) to ensure that emission reductions are achieved as needed to mitigate transport of ozone pollution and one of its main precursors, NO_x, across State boundaries in the eastern half of the United States (September 24, 1998). The SIP Call contains an emission cap-and-trade program to achieve these NO_x reductions in the most cost-effective way possible. NJDEP complies with the SIP Call with Subchapter 31.

While NJDEP's OMET Program discussed in this TSD does not need to meet the requirements of these two programs, or interface with these other two programs, the NJDEP's adoption of the Ozone Transport Commission's NO_x Budget Program and finalization of EPA's SIP Call may replace some of the emission trades which would occur under NJDEP's OMET Program, as well as establish another overall, generic emission trading program. Also, existing Subchapter 31.6 of the NO_x Budget Program requires a budget source may not use emission reductions as the basis for a DER credit and, except for the NO_x Budget Program's early reduction provisions, may not convert a DER credit to an allowance.

Section III.B.4. DER Credit Generation Strategies from May 1, 1992 thru August 2, 1996

This Section describes EPA's review of the ten DER credit generation strategies. As indicated in ***Section III.A.4.***, NJDEP submitted ten applications for DER credit generation strategies from May 1, 1992 through August 2, 1996 as part of the OMET SIP submittal. NJDEP submitted these DER credit generation strategies to EPA in response to EPA guidance on credits generated prior to rule adoption. NJDEP submitted these strategies as supplemental information to support the OMET SIP submittal.

EPA reviewed these ten applications for DER credit generation strategies, independent of its review of the OMET SIP revision. EPA, in its role of program over-sight, decided to conducted this review to provide a comprehensive

evaluation of NJDEP's OMET Program. This comprehensive evaluation consisted of the regulatory review of Subchapter 30 as a SIP revision and the review of the State's implementation of the OMET Program, through the review of the MOU and the ten credit generation strategies.

In the review of the ten DER credit generation strategies, EPA first determined whether each strategy was consistent with the criteria contained in Subchapter 30.6(b)(2) for emission reductions generated between May 1, 1992 and August 2, 1996. EPA confirmed that each of the ten strategies met the criteria for submitting a Notice of Certification of DER Credit Generation to NJDEP by October 31, 1996. Further, EPA acknowledges these ten strategies to be the only DER credit generation strategies which meet the criteria at Subchapter 30.6(b)(2), and would not expect any other pre-adoption credits to exist, except those pursuant to Subchapter 30.6(b)(1).

Second, EPA compared each strategy to the requirements of Subchapter 30. EPA's review was based on the information submitted by NJDEP, as well as additional information obtained either directly from the facilities or from the Registry website at www.omet.com. EPA developed the following checklist to illustrate its review of each credit generation strategy. In each checklist, a 'checkmark' (**T**) meant the credit generation strategy met EPA's requirement. An 'x-mark' (**X**) meant the credit generation strategy did not meet EPA's requirement.

DER Credit Generation Strategy Checklist

Criteria/Citation	**U** or **Y**	Notes on Strategy's consistency with criteria
Application Date (before 10/31/96) – 30.6(b)		
Applicability – 30.4(a)		
Generation period (1yr batches) – 30.4(c)		
Baseline Period – 30.5(c)		
Baseline Emission Rate – 30.5(b)		
Actual Emission Rate – 30.5(b)(3)		
Economic Output – 30.5(b)(4)		
Generation Period – 30.5(c)		
# DER: Ozone season – 30.5(b)		
# DER: Non-ozone season – 30.5(b)		
Tons ø DER (ton/0.05=DER) – 30.3(e)		
Increase in other sources? – 30.5(d)		
Limits on Generation – 30.6 *		
Increases in HAP addressed – 30.6(a)(7)		
In the State Inventory? – 30.6(c)		

Criteria/Citation	**U** or **Y**	Notes on Strategy's consistency with criteria
90 day Notice of Genrt'n – 30.7(a)		
Statement: increase in HAP -- 30.7(b)(1)		
Statement: DERs real & surplus – 30.7(b)(2)		
Statement: 30.6 validity – 30.7(b)(3)		
Statement: late Notice – 30.7(b)(4)		
General Notice reqts – 30.16 * ID of generator and source, address		
Statement: adherence to EQP – 30.16(c)(7)		
Certification – 30.16(d)		
Quantification protocol – 30.20 *		

* – need to refer to Subchapter 30 and go through each provision.

Third, EPA compared the strategy to any applicable EPA guidance on emission trading and emission quantification protocols. For example, if the strategy was for a NO_x or VOC stationary source, EPA considered relevant guidance from control technique guidance and alternative control technique documents. Specific comments, in addition to the Subchapter 30 checklist, were then identified for each strategy.

EPA determined there were varying degrees of deficiencies in all ten credit generation strategies. The deficiencies in each strategy ranged from minor calculation errors to missing information to basic inconsistencies between the strategy and Subchapter 30 and EPA guidance. If EPA discovered a deficiency in any of the strategies, the issue was a specific deficiency with the strategy, and not a deficiency with the protocol development criteria contained in NJDEP's OMET Program. Independent of the review of the OMET SIP revision, EPA decided to inform the NJDEP, the applicable sources, the Registry and any applicable verifiers or users, of the deficiencies as a result of EPA's review. EPA provided this information to the NJDEP and the relevant parties in correspondence in the Summer of 1999.

In this correspondence, EPA summarized its approach to the review of the ten strategies, identified the deficiencies of each strategy and described its expectations for the NJDEP and the sources to address the deficiencies. EPA clarified the ten DER credit generation strategies were not the subject of EPA's proposed action on the OMET SIP submittal. EPA is not proposing to approve or disapprove the strategies as part of the proposed action on Subchapter 30. Rather, in the goal of providing a comprehensive evaluation of NJDEP's OMET Program, EPA is providing this information to give the participants in the OMET Program an opportunity to address any deficiencies (through implementation of the OMET Program) prior to final approval of the OMET SIP revision. EPA expects the deficiencies contained in the correspondence to be addressed prior to the verification or the use of the subject DER credits. In fact, the correspondence itself should be considered as part of the verifier's review and to fulfill the requirement that the verification of generated DER credits be based on diligent inquiry by the verifier.

Upon a final approval of New Jersey's OMET SIP revision, Subchapter 30 will be federally-enforceable. Since

Subchapter 30 is a SIP flexibility mechanism, compliance with its terms is essential in order to avoid complying with other applicable requirements of the SIP. Also, the generator and the verifier may have other responsibilities related to proper quantification and verification of the discrete credits. EPA suggests the generators, verifiers and any users of the discrete credits review these specific discrete credit generation strategies before Subchapter 30 becomes subject to EPA enforcement.

Section III.C. Conclusion

Ozone formation is not a localized phenomenon, but a series of complex reactions between NO_x and VOC emissions in the presence of sunlight over a period of time. The whole State of New Jersey is nonattainment for ozone. As required by the Act, NJDEP adopted NO_x and VOC RACT rules to reduce emissions of these pollutants as one of its strategies in the SIP for the ozone NAAQS.

The concept of credit use encourages industry to reduce emissions beyond the regulatory or permitted requirements, which in turn improves air quality. Allowing sales of generated credits to other sources that are not in a position to immediately achieve emission reductions through technological improvements, would not adversely affect the air quality considering emission reductions from credit generators. This concept of credit generation and sale will encourage other facilities to create credits by applying control technologies earlier than rule requirements. It should be emphasized that 10% of the total credit generated is permanently retired for the benefit of the environment and the remaining credit is available for sale. Also, while control equipment rarely has a 100% reliability factor and emissions increase during equipment downtime, credits are purchased for 100% of the operating hours. Finally, without emission trading, sources would request NJDEP for a waiver from the RACT requirements, resulting in emissions equal to or greater than the amount of DER credits traded.

This use of DER credits obtained through intertemporal trading of emission reductions to meet air pollution control requirements is an innovative approach being used in lieu of more conventional practices such as application of control technology, repowering, seasonal combustion of natural gas, or emissions averaging, that is, averaging the emissions from units under the control of a single company. To ensure that the discrete emission reductions achieved through this innovative measure are greater than the reductions in emissions that would otherwise be obtained for the duration of the approval period, NJDEP requires that the DER credits applied exceed the otherwise anticipated emission reductions by ten percent. NJDEP permanently retires this ten percent for the benefit of the environment.

EPA has reviewed the regulations, source applications, MOU and all documentation related to NJDEP's OMET Program SIP revision for completeness and approvability. EPA agrees with the NJDEP's determination that the open market emission program provides an innovative way for an affected source to achieve emission reductions equal to or beyond the reductions required by control requirements, at less cost to industry. While NJDEP's OMET Program provides some environmental benefit, NJDEP is not claiming credit for any emission reductions from the Program in their SIP. Rather, the Program provides a compliance option for owners of affected units to choose cost-effective control options to meet an overall emission reduction equivalent to applicable requirements.

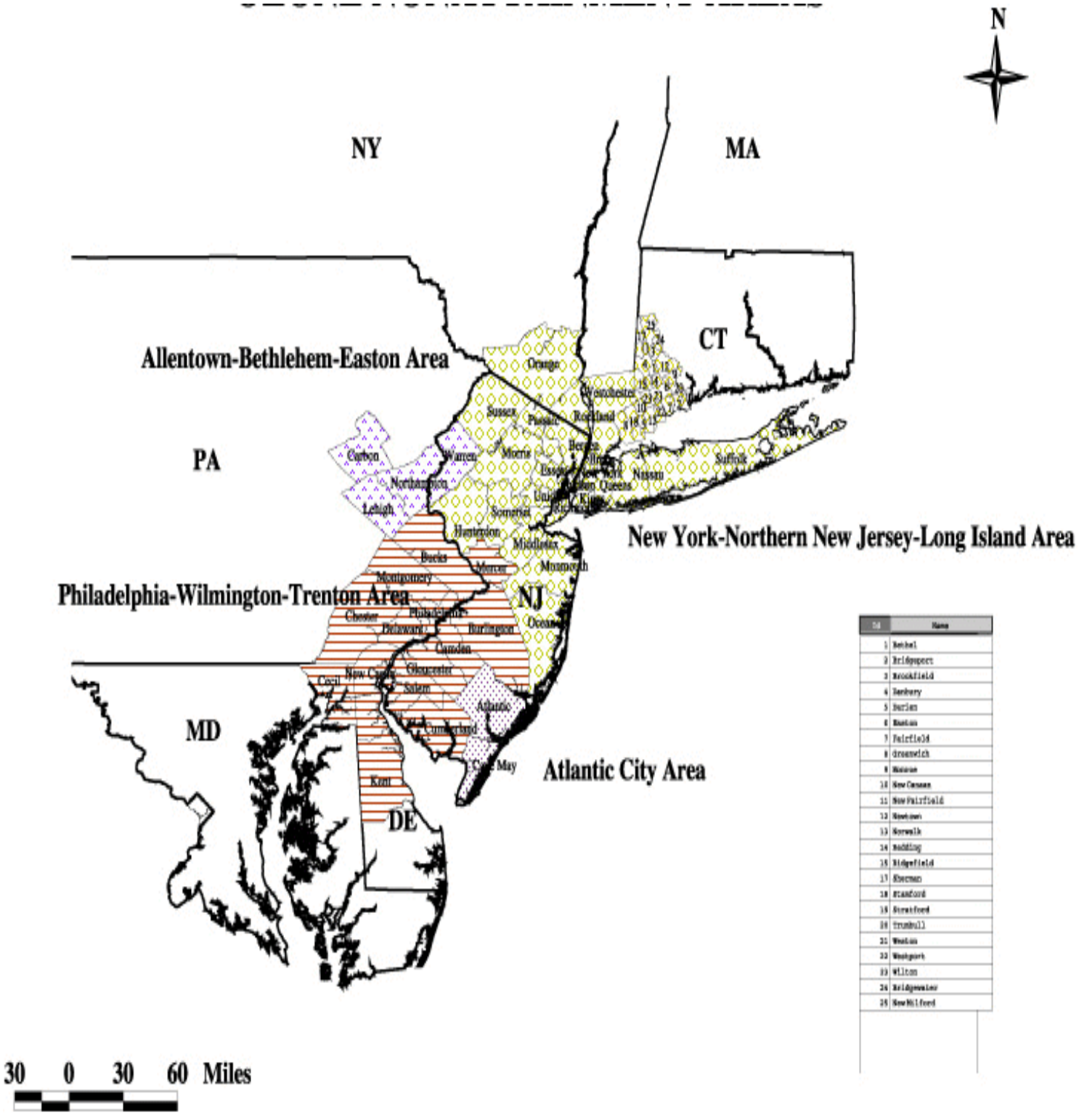
In this TSD, EPA is proposing to approve the new Subchapter 30, and the amendments to Subchapters 3, 16, 18,

19 and 22. However, EPA is proposing to condition its full approval of NJDEP's OMET Program on the State's correction of the following deficiencies:

1. NJDEP must incorporate into Subchapter 30.20 a requirement that sources use existing and future EPA-approved protocols for quantifying emission reductions at applicable sources, and to allow sources to deviate from an EPA protocol only if they first get the approval of EPA Protocols (Tables 11 and 51).
2. NJDEP must revise Subchapter 30 to include the potential for monetary penalties at any time when the user does not hold sufficient credits (Tables 22 and 58).
3. NJDEP must address the issue of ownership claims in its regulation and make provisions for reporting ownership claims in the Notices of DER Credit Generation (III.B.3.b.).
4. NJDEP must require notification of the relevant Metropolitan Planning Organizations and Department of Transportation in the event of mobile source generation activities (III.B.3.c.).
5. NJDEP must correct by rule revision, or by procedures submitted as part of the SIP, how notices of use which involve increases within 100 km of a Class I area are forwarded to the Federal Land Manager (III.B.3.d.).
6. NJDEP must submit to EPA additional information on how the emission inventories account for unused credits under the OMET Program (Table 3).
7. NJDEP must revise the provisions on Notice requirements to include information on forgone toxic emission reductions (Tables 33 and 40).

APPROVABILITY RECOMMENDATION: PROPOSED CONDITIONAL APPROVAL

ATTACHMENT 1 NEW JERSEY OZONE NONATTAINMENT AREAS



	Name
1	Bethel
2	Bridgeport
3	Brookfield
4	Danbury
5	Darien
6	Newtown
7	Fairfield
8	Greenwich
9	Monroe
10	New Canaan
11	New Fairfield
12	Newtown
13	Norwalk
14	Redding
15	Ridgefield
17	Sherman
18	Stamford
19	Stratford
20	Trumbull
21	Weston
22	Westport
23	Wilton
24	Bridgewater
25	New Milford

ATTACHMENT 2 SUMMARY OF TRADING ACTIVITY

NOx

EMISSION REDUCTIONS AND CREDITS GENERATED AND USED IN THE OZONE AND NON-OZONE SEASONS

Season in which Generation or Use Occurred	Emission Reductions Generated[3] (in tons)	No. of Credits Generated[3]	No. of Credits Used In-State[4,5]
May-Dec 1992			
O_3 Season[1]	4,280	85,600	0
Non-O_3 Season[2]	0	0	0
Total	4,280	85,600	0
1993			
O_3 Season[1]	2,859	57,180	0
Non-O_3 Season[2]	0	0	0
Total	2,859	57,180	0
1994			
O_3 Season[1]	4,329.6	86,592	0
Non-O_3 Season[2]	3,205.2	64,104	0
Total	7,534.8	150,696	0
1995			
O_3 Season[1]	1,192.65	23,853	142
Non-O_3 Season[2]	407.65	8,153	330
Total	1,600.3	32,006	472
1996			
O_3 Season[1]	320.8	6,416	189
Non-O_3 Season[2]	829.65	16,593	763
Total	1,150.45	23,009	952

NOx (continued)

EMISSION REDUCTIONS AND CREDITS GENERATED AND USED IN THE OZONE AND NON-OZONE SEASONS

Season in which Generation or Use Occurred	Emission Reductions Generated[3] (in tons)	No. of Credits Generated[3]	No. of Credits Used In-State[4,5]
1997			
O_3 Season[1]	1,192.3	23,846	107
Non-O_3 Season[2]	2,227.5	44,550	201
Total	3,419.8	68,396	308
Jan-Sept 1998			
O_3 Season[1]	43.35	867	271
Non-O_3 Season[2]	1,420.65	28,413	1,204
Total	1,464.0	29,280	1,475
NOx TOTALS			
O_3 Season[1]	14,217.7	284,354	709
Non-O_3 Season[2]	8,090.65	161,813	2,498
GRAND TOTAL	22,308.35	446,167	3,207

NOx (continued)

NUMBER OF OZONE SEASON AND NON-OZONE SEASON CREDITS TRANSFERRED, RETIRED, VERIFIED AND INVALIDATED WITHIN EACH YEAR

Type of Credits	No.of Credits Transferred[6]	No. of Credits Retired[6] (non-use)	No. of Credits Verified[6]	No. of Credits Invalidated[6]
May-Dec 1992				
O_3 Season[1] Credits	0	0	0	0
Non-O_3 Season[2] Credits	0	0	0	0
Total Credits	0	0	0	0
1993				
O_3 Season[1] Credits	0	0	142,780	0
Non-O_3 Season[2] Credits	0	0	0	0
Total Credits	0	0	142,780	0
1994				
O_3 Season[1] Credits	28,000	0	0	0
Non-O_3 Season[2] Credits	0	0	0	0
Total	28,000	0	0	0
1995				
O_3 Season[1] Credits	26,000	0	0	0
Non-O_3 Season[2] Credits	0	0	0	0
Total	26,000	0	0	0
1996				
O_3 Season[1] Credits	12,580	0	31,380	0
Non-O_3 Season[2] Credits	5,280	0	0	0
Total	17,860	0	31,380	0

NOx (continued)

NUMBER OF OZONE SEASON AND NON-OZONE SEASON CREDITS TRANSFERRED, RETIRED, VERIFIED AND INVALIDATED WITHIN EACH YEAR

Type of Credits	No. of Credits Transferred[6]	No. of Credits Retired[6] (non-use)	No. of Credits Verified[6]	No. of Credits Invalidated[6]
1997				
O_3 Season[1] Credits	49,280	10,480	109,327	0
Non-O_3 Season[2] Credits	2,660	5,280	111,020	0
Total Credits	51,940	15,760	220,347	0
Jan-Sept 1998				
O_3 Season[1] Credits	6,140	0	0	0
Non-O_3 Season[2] Credits	400	0	49,358	0
Total Credits	6,540	0	49,358	0
NOx TOTALS				
O_3 Season[1] Credits	122,000	10,480	283,487	0
Non-O_3 Season[2] Credits	8,340	5,280	160,378	0
GRAND TOTAL	130,340	15,760	443,865	0

VOCs

EMISSION REDUCTIONS AND CREDITS GENERATED AND USED IN THE OZONE AND NON-OZONE SEASONS

Season in which Generation or Use Occurred	Emission Reductions Generated[3] (in tons)	No. of Credits Generated[3]	No. of Credits Used In-State[4,5]
May-Dec 1992			
O_3 Season[1]	1.85	37	0
Non-O_3 Season[2]	.55	11	0
Total	2.40	48	0
1993			
O_3 Season[1]	56.75	1,135	0
Non-O_3 Season[2]	4.7	94	0
Total	61.45	1,229	0
1994			
O_3 Season[1]	23.4	468	0
Non-O_3 Season[2]	5.55	111	0
Total	28.95	579	0
1995			
O_3 Season[1]	7.65	153	0
Non-O_3 Season[2]	6.15	123	0
Total	13.8	276	0
1996			
O_3 Season[1]	8.1	162	0
Non-O_3 Season[2]	9.85	197	0
Total	17.95	359	0

VOCs (continued)

EMISSION REDUCTIONS AND CREDITS GENERATED AND USED IN THE OZONE AND NON-OZONE SEASONS

Season in which Generation or Use Occurred	Emission Reductions Generated[3] (in tons)	No. of Credits Generated[3]	No. of Credits Used In-State[4,5]
1997			
O_3 Season[1]	115.6	2,312	41[7]
Non-O_3 Season[2]	90.85	1,817	71[7]
Total	206.45	4,129	112[7]
Jan-Sept 1998			
O_3 Season[1]	4.15	83	0
Non-O_3 Season[2]	4.0	80	0
Total	8.15	163	0
VOC TOTALS			
O_3 Season[1]	217.5	4,350	41[7]
Non-O_3 Season[2]	121.65	2,433	71[7]
GRAND TOTAL	339.15	6,783	112[7]

VOCs (continued)

NUMBER OF OZONE SEASON AND NON-OZONE SEASON CREDITS TRANSFERRED, RETIRED, VERIFIED AND INVALIDATED WITHIN EACH YEAR

Type of Credits	No. of Credits Transferred[6]	No. of Credits Retired[6] (non-use)	No. of Credits Verified[6]	No. of Credits Invalidated[6]
May-Dec 1992				
O_3 Season[1] Credits	0	0	0	0
Non-O_3 Season[2] Credits	0	0	0	0
Total	0	0	0	0
1993				
O_3 Season[1] Credits	30	0	0	0
Non-O_3 Season[2] Credits	0	0	0	0
Total	30	0	0	0
1994				
O_3 Season[1] Credits	0	0	0	0
Non-O_3 Season[2] Credits	0	0	0	0
Total	0	0	0	0
1995				
O_3 Season[1] Credits	20	0	0	0
Non-O_3 Season[2] Credits	0	0	0	0
Total	20	0	0	0
1996				
O_3 Season[1] Credits	0	0	0	0
Non-O_3 Season[2] Credits	0	0	0	0
Total	0	0	0	0

VOCs (continued)

NUMBER OF OZONE SEASON AND NON-OZONE SEASON CREDITS TRANSFERRED, RETIRED, VERIFIED AND INVALIDATED WITHIN EACH YEAR

Type of Credits	No. of Credits Transferred[6]	No. of Credits Retired[6] (non-use)	No. of Credits Verified[6]	No. of Credits Invalidated[6]
1997				
O_3 Season[1] Credits	0	55[8]	387	0
Non-O_3 Season[2] Credits	0	80[8]	393	0
Total	0	135[8]	780	0
Jan-Sept 1998				
O_3 Season[1] Credits	41	128[8]	1,072	0
Non-O_3 Season[2] Credits	0	192[8]	1,513	0
Total	41	320[8]	2,585	0
VOC TOTALS				
O_3 Season[1] Credits	91	183[8]	1,459	0
Non-O_3 Season[2] Credits	0	272[8]	1,906	0
GRAND TOTAL	91	455[8]	3,365	0

[1] "O_3 Season" means the ozone season (May 1 thru September 30).

[2] "Non-O_3 Season" means outside the ozone season (January 1 thru April 30 and October 1 thru December 31).

[3] The year in which the last day of the generation period falls is the year in which the generated emission reductions, and the credits based on these emission reductions, are counted. For example, if 100 tons of NOx (or VOC) emission reductions were generated from October 1, 1996 thru April 30, 1997 all 100 tons are counted as being generated in the 1997 non-ozone season.

[4] The year in which the last day of the use period falls is the year in which the credit use is counted. For example, if 100 non-ozone NOx (or VOC) DER credits were used from October 1, 1996 thru April 30, 1997, all 100 tons are counted as being used in the 1997 non-ozone season.

[5] The number of credits used equals the number of DER credits to compensate for emission increases (i.e., 90 percent of the number of credits used) plus the number of DER credits automatically retired (i.e., ten percent of the number of credits used).

[6] The year of the submittal date to the registry operator of the Notice of DER Credit Transfer, the Notice of DER Credit Retirement, the Notice of DER Credit Verification, or the Notice of Invalid DER Credits is the year in which the DER credits are considered transferred, retired, verified or invalidated.

[7] These DER credits were used but do not appear in the registry because the fees charged by the registry operator for the Notice and Certification of DER Credit Generation were not paid as of 10/26/98.

[8] These DER credits were retired but do not appear in the registry because the fees charged by the registry operator for the Notice and Certification of DER Credit Generation were not paid as of 10/26/98.